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MANUAL  
OF  
**Parliamentary Practice,**  
WITH  
AN APPENDIX,  
CONTAINING  
THE RULES OF THE LEGISLATIVE COUNCIL  
AND  
HOUSE OF ASSEMBLY  
OF  
**Upper Canada.**

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# A MANUAL OF PARLIAMENTARY PRACTICE.

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## IMPORTANCE OF RULES.

### SECTION I.

*The Importance of adhering to rules.*—Mr. Onslow, the ablest among the speakers of the House of Commons, used to say, “it was a maxim he had often heard when he was a young man, from old and experienced members, that nothing tended more to throw power into the hands of administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, the rules of proceeding : that these forms, as instituted by our ancestors, operated as a check, and controul on the actions of the majority, and that they were in many instances, a shelter and protection to the minority, against the attempts of power.” So far the maxim is certainly true, and is founded in good sense, that as it is always in the power of the majority, by their numbers, to stop any improper measures imposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power, are

the forms and rules of proceeding, which have been adopted as they were found necessary from time to time, and have become the law of the house ; by a strict adherence to which, the weaker party can only be protected from those irregularities and abuses, which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities. 2 HATS. 171. 172.

And whether these forms be in all cases the most rational or not, is really not of so great importance. It is much more material that there should be a rule to go by, than what that rule is ; that there may be an uniformity of proceeding in business, not subject to the caprice of the Speaker, or captiousness of the members. It is very material that order, decency and regularity be preserved in a dignified public body. 2. HATS. 149.

## SECTION II.

*Privilege.*—The privileges of the members of parliament, from small and obscure beginnings, have been advancing for centuries with a firm and never yielding pace. Claims seem to have been brought forward from time to time, and repeated, till some example of their admission enabled them to build law on that example. We can only therefore state the point of progression at which they now are. It is now acknowledged, 1st. That they are at all times exempted from question elsewhere for any thing said in their own house ; that during the time of privilege. 2. neither a member himself, his\* wife, or his servants. [familiares sui] for any matter of their own, may

\* Ord. of the House of Commonst 1663. July 16.

be \*arrested on mesne process, in any civil suit : 3. nor be detained under execution, though levied before time of privilege : 4. Nor impleaded, cited, or subpoenaed in any court : 5. Nor summoned as a witness or juror : 6. Nor may their lands or goods be distrained : 7. Nor their persons assaulted, or characters traduced. And the period of time, covered by privilege, before and after the session, with the practice of short prorogations under the connivance of the crown, amounts in fact to a perpetual protection against the course of justice. In one instance indeed it has been relaxed by the 10. G. 3. c. 50. which permits judiciary proceedings to go on against them. That these privileges must be continually progressive seem to result from their rejecting all definition of them ; the doctrine being that "their dignity and independence are preserved by keeping their privileges indefinite;" and that "the maxims upon which they proceed, together with the method of proceeding, rest entirely in their own breast, and are not defined, and ascertained by any particular stated laws." 1. BLACKST. 163. 164.

While privilege was understood in England to extend only to exemption from arrest *eundo, morando, et redeundo*, the House of Commons themselves decided that "a convenient time was to be understood." (1580.) 1. HATS. 99. 100. Nor is the law so strict in point of time as to require the party to set out immediately on his return, but allows him time to settle his private affairs and to prepare for his journey ; and does not even scan his road very nicely, nor forfeit his protection for a little deviation from that

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\* *Elsygne* 217. 1. Hats. 21. 1. Grey's deb. 133.



which is most direct ; some necessity perhaps constraining him to it. 2. STRA. 986, 987.

This privilege from arrest, privileges of course against all process the disobedience to which is punishable by an attachment of the person ; as a subpoena ad respondendum, or testificandum, or a summons on a jury : and with reason ; because a member has superior duties to perform in another place.

Privilege from arrest takes place by force of the election ; and before a return be made, a member elected may be named of a committee, and is to every intent a member except that he cannot vote until he is sworn. Memor. 107, 108. Dewes 642. col. 2, 643. col. 1. Pet. miscel. parl. 119. Lex. Parl. c. 23. 2. Hats. 22, 62.

Every man must, at his peril, take notice who are members of either house returned of record. Lex. Parl. 23, 4. inst. 24.

On complaint of a breach of privilege, the party may either be summoned, or sent for in custody of the serjeant, 1, Grey, 88, 95.

The privilege of a member is the privilege of the house. If the member waive it without leave, it is a ground for punishing him, but cannot in effect waive the privilege of the house. 3, Grey 140, 222.

For any speech or debate in either house, they shall not be questioned in any other place. Protest of the Commons to James I. 1621. 2. Rapin, No. 54. pa. 211, 212. But this is restrained to things done in the house in a parliamentary course. 1. Rush. 663. For he is not to have privilege contra morem parliamentarium, to exceed the bounds and limits of his place and duty. Com. p.

If an offence be committed by a member in the House, of which the house has cognisance, it is an infringement of their rights for any person or court, to take notice of it, till the house has punished the offender, or referred him to a due course. Lex. Parl. 63.

Privilege is in the power of the house, and is a restraint to the proceeding of inferior courts, but not of the house itself. 2. Nalson 450. 2. Grey 399. For whatever is spoken in the house is subject to the censure of the house; and offences of this kind have been severely punished by calling the person to the bar to make submission, committing him to the tower, expelling the house, &c. Scob. 72. L. Parl. c. 22.

It is a breach of order for the Speaker to refuse to put a question which is in order. 2. Hats. 175. 6. 5. Grey 133.

And even in cases of treason, felony, and a breach of peace, to which privilege does not extend as to substance, yet in parliament, a member is privileged as to the mode of proceeding. The case is first to be laid before the house, that it may judge of the fact and of the grounds of the accusation, and how far forth the manner of the trial may concern their privilege. Otherwise it would be in the power of other branches of the Government, and even of every private man, under pretences of treason, &c. to take any man from his service in the house, and so as many, one after another, as would make the house what he pleaseth. Decr. of the Com. on the King's declaring Sir John Hotham a traitor. 4. Rushw. 586. So when a member stood indicted of felony, it was adjudged that he ought to remain of the house till conviction. For it may be any man's case, who is guiltless, to be accused and indicted of

felony, or the like crime. 23. El. 1580. D'Ewes, 283. col. 1. Lex. Parl. 133.

When it is found necessary for the public service to put a member under arrest, or when, on any public enquiry, matter comes out which may lead to affect the person of a member, it is the practice immediately to acquaint the house, that they may know the reasons for such a proceeding, and take such steps, as they think proper. 2 Hats. 259. Of which see many examples. Ib 256. 257. 258. But the communication is subsequent to the arrest. 1. Blackst. 167.

It is highly expedient, says Hatsell, for the due preservation of the privileges of the separate branches of the legislature, that neither should encroach on the other, or interfere in any matter depending before them, so as to preclude, or even influence that freedom of debate, which is essential to a free council. They are therefore not to take notice of any bills or other matters depending, or of votes that have been given, or of speeches which have been held, by the members of either of the other branches of the legislature, until the same have been communicated to them in the usual parliamentary manner. 2. Hats. 252. 4. Inst. 15. Seld. Jud. 53. Thus the King's taking notice of the bill for suppressing soldiers depend<sup>g</sup> before the house, his proposing a provisional clause for a bill before it was presented to him by the two houses; his expressing displeasure against some persons for matters moved in parliament during the debate and preparation of a bill, were breaches of privilege. 2, Nalson, 743. and in 1783, Decr. 17, it was declared a breach of fundamental privileges, &c. to report any opinion, or pretended opinion of the king on any bill or proceeding depending in either house of

parliament, with a view to influence the votes of the members. 2. Hats. 251, 6.

### SECTION III.

*Quorum.*—In general the chair is not to be taken till a quorum for business is present ; unless, after due waiting, such a quorum be despaired of, when the chair may be taken and the house adjourned. And whenever, during business, it is observed that a quorum is not present, any member may call for the house to be counted, and being found deficient, business is suspended. 2. Hats. 125, 126.

### SECTION IV.

*Call of the House.*—On a call of the House, each person rises up as he is called and answereth ; the absentees are then only noted, but no excuse to be made till the house be fully called over. Then the absentees are called a second time, and if still absent excuses are to be heard. Ord. H. Com. 92.

Orders for calls on different days may subsist at the same time. 2 Hats. 72.

### SECTION V.

*Speaker.*—When but one person is proposed, and no objection made, it has not been usual in parliament to put any question to the House ; but without a question, the members proposing him, conduct him to the chair. But if there be objection, or another proposed, a question is put by the clerk. 2. Hats. 158. As are also questions of adjournment. 6, Grey, 406. Where the house debated and exchanged messages and answers with the king for a

week, without a speaker, till they were prorogued. They have done it *dedie in diem* for 14 days, 1. Chand. 331. 335.

Where the Speaker has been ill, other Speakers *pro tempore* have been appointed. Instances of this are 1. H. 4. Sir John Cheney, and so Sir William Sturton, and in 15. H. 6. Sir John Tyrrel, in 1656, Jan. 27, 1658. Mar. 9. 1659, Jan. 13.

|                                       |                                                        |
|---------------------------------------|--------------------------------------------------------|
| Sir Job. Charlton ill. Seymour chosen | } Not merely<br>protem, 1.<br>Chand. 169,<br>276, 277. |
| 1673, Feb. 18.                        |                                                        |
| Seymour being ill, Sir Robt. Sawyer   |                                                        |
| chosen, 1678, Apr. 15.                |                                                        |
| Sawyer being ill, Seymour chosen.     |                                                        |

Thorpe in execution, a new Speaker chosen, 31 H. VI. 3 Grey 11, and Mar. 14, 1694, Sir John Trevor chosen. There have been no later instances, 2. Hats. 161. 4 inst. 8 L. Parl. 263.

A Speaker may be removed at the will of the house, and a Speaker *pro tempore* appointed. 2, Grey 186. 5, Grey, 134.

## SECTION VI.

*Address.* A joint address of both houses of parliament is read by the Speaker of the H. of Lords. It may be attended by both houses in a body, or by a committee from each house, or by the two speakers only. An address of the H. of Commons only, may be presented by the whole house, or by the speaker, 9 Grey 473. 1 Chandler 298, 301, or by such particular members as are of the Privy council. 2. Hats. 278.

## SECTION VII.

*Committees.*—Standing committees, as of privilege and

elections, &c. are usually appointed at the first meeting, to continue through the session. The person first named is generally permitted to act as chairman. But this is a matter of courtesy; every committee having a right to elect their own chairman, who presides over them, puts questions, and reports their proceedings to the house. 4. inst. 11, 12. Scob. 9. 1. Grey, 122.

At these committees the members are to speak standing and not sitting: though there is reason to conjecture it was formerly otherwise. D'Ewes, 630, col. 1, 4. Parl. hist. 440, 2. Hats. 77.

Their proceedings are not to be published, as they are of no force till confirmed by the house. Rushw. part 3. vol. 2. 74. 3. Grey 401. Scob. 39. Nor can they receive a petition but through the house. 9, Grey 412.

When a committee is charged with an enquiry, if a member prove to be involved, they cannot proceed against him, but must make a special report to the House, whereupon the member is heard in his place, or at the bar, or a special authority is given to the committee, to enquire concerning him. 9, Grey, 523.

So soon as the House sits, and a committee is notified of it, the chairman is in duty bound to rise instantly, and the member to attend the service of the House. 2, Nals. 319.

It appears that on joint committees of the Lords and Commons, each committee acted integrally in the following instances. 7, Grey 261, 278. 255, 338, 1. Chandler, 357, 462. In the following instances it does not appear whether they did or not. 6 Grey, 129. 7 Grey, 213, 229, 321.

## SECTION IX.

*Committee of the whole.*—The speech, messages and other matters of great concernment, are usually referred to a committee of the whole house. 6 Grey, 311. Where general principles are digested in the form of resolutions, which are debated and amended till they get into a shape which meets the approbation of a majority. These being reported and confirmed by the house, are then referred to one or more select committees, according as the subject divides itself into one or more bills. Scob. 36, 44. Propositions for any charge on the people are especially to be first made in a committee of the whole. 3 Hats. 127. The sense of the whole is better taken in committee, because in all committees every one speaks as often as he pleases. Scob. 49. They generally acquiesce in the chairman named by the Speaker: but, as well as all other committees, have a right to elect one, some member, by consent, putting the question. Scob. 36. 3 Grey 301. The form of going from the house into committee, is for the Speaker, on motion, to put the question that the house do now resolve itself into a committee of the whole to take under consideration such a matter, naming it. If determined in the affirmative, he leaves the chair and takes a seat elsewhere, as any other member; and the person appointed chairman seats himself at the clerk's table. Scob. 36. Their quorum is the same as that of the house; and if a defect happens, the chairman, on a motion and question, rises, the speaker resumes the chair, and the chairman can make no other report than to inform the House of the cause of their dissolution. If a message is announced during a

committee, the speaker takes the chair, and receives it, because the committee cannot. 2, Hats. 125, 126.

In a committee of the whole, the tellers on a division, differing as to numbers, great heats and confusion arose, and danger of a decision by the sword. The speaker took the chair, the mace was forcibly laid on the table, whereupon, the members retiring to their places, the speaker told the House 'he had taken the chair without an order, to bring the house into order.' Some excepted against it; but it was generally approved as the only expedient to suppress the disorder. And every member was required, standing up in his place, to engage that he would proceed no further in consequence of what had happened in the grand committee, which was done. 3 Grey, 128.

A committee of the whole being broken up in disorder, and the chair resumed by the speaker without an order, the house was adjourned. The next day the committee was considered as thereby dissolved, and the subject again before the house; and it was decided in the house, without returning into committee. 3 Grey, 130.

No previous question can be put in a committee; nor can this committee adjourn as others may; but if their business is unfinished, they rise; on a question, the house is resumed, and the the chairman reports that the committee of the whole have, according to order, had under their consideration such a matter, and have made progress therein; but not having had time to go through the same, have directed him to ask leave to sit again. Whereupon a question is put on their having leave, and on the time when the house will again resolve itself into a committee. Scob. 38. But if they have gone through the matter referred to them, a member moves that the committee may rise and the



chairman report their proceedings to the house, which being resolved, the chairman rises, the speaker resumes the chair, the chairman informs him that the committee have gone through the business referred to them, and that he is ready to make report when the house shall think proper to receive it. If the house have time to receive it, there is usually a cry of 'now, now,' whereupon he makes the report: but if it be late, the cry is 'to-morrow, to-morrow,' or 'on Monday, &c.' or a motion is made to that effect, and a question put that it be received to-morrow, &c. Scob. 38.

In other things the the rules of proceeding are to be the same as in the house. Scob. 39.

## SECTION IX.

*Examination of Witnesses.*—Common fame is a good ground for the House to proceed by enquiry, and even accusation. Resolution House Commons 1. Car. 1. 1625. Rush. L. Parl. 115. 1. Grey. 16—22. 92. 8. Grey. 21, 23, 27, 45.

Witnesses are not to be produced but where the House has previously instituted an enquiry 2 Hats. 102. nor then are orders for their attendance given blank. 3 Grey, 51.

When any person is examined before a committee, or at the bar of the house, any member wishing to ask a person a question, must address it to the speaker or chairman, who repeats the question to the person, or says to him 'you hear the question, answer to it.' But if the propriety of the question be objected to, the speaker directs the the witness, counsel and parties, to withdraw; for no ques-

tion can be moved or put, or debated while they are there.

2 Hats. 108. Sometimes the questions are previously settled in writing before the witness enters ib. 106, 107, 8. Grey 64. The questions asked must be entered in the journals. 3, Grey 81. But the testimony given in answer before the House is never written down; but before a committee it must be, for the information of the House who are not present to hear it. 7. Grey 52, 334.

If either house have occasion for the presence of a person in custody of the other, they ask the other their leave that he may be brought up to them in custody. 3, Hats. 52.

A member, in his place, gives information to the House of what he knows of any matter under hearing at the bar. Jour. H. of C. Jan. 22. 1744—5.

Either house may request, but not command the attendance of a member of the other. They are to make the request by message to the other house, and to express clearly the purpose of attendance, that no improper subject of examination may be tendered to him. The house then gives leave to the member to attend, if he chuse it; waiting first to know from the member himself whether he chooses to attend, till which they do not take the message into consideration. But when the peers are sitting as a court of criminal judicature, they may order attendance; unless where it be a case of impeachment by the Commons. There it is to be a request. 3 Hats. 17. 9, Grey 306, 406, 40. Grey 133.

Counsel are to be heard only on private, not on public bills, and on such points of law only as the House shall direct. 10, Grey 61.

## SECTION X.

*Arrangement of Business.*—The Speaker is not precisely bound to any rules as to what bill or other matter shall be first taken up, but is left to his own discretion, unless the house on a question decide to take up a particular subject. Hakew. 136.

A settled order of business is, however, necessary for the government of the presiding person, and to restrain individual members from calling up favourite measures, or matters under their special patronage, out of their just turn. It is useful also for directing the discretion of the house, when they are moved to take up a particular matter, to the prejudice of others having priority of right to their attention in the general order of business.

In parliament 'instances make order' per Speaker Onslow. 2 Hats. 141. But what is done only by one parliament, cannot be called Custom of parliament by Prynne, 1, Grey 52.

## SECTION XI.

*Order respecting Papers.*—The clerk is to let no journals, records, accounts, or papers to be taken from the table, or out of his custody. 2 Hats. 193. 194.

Mr. Prynne having at a committee of the whole amended a mistake in a bill without order or knowledge of the committee, was reprimanded. 1 Chand. 77.

A bill being missing, the house resolved that a protestation should be made and subscribed by the members 'before Almighty God and this honourable house, that neither myself nor any other to my knowledge, have taken away, or do at this present conceal a bill entitled, &c. 5, Grey, 202.

After a bill is engrossed, it is put into the speaker's hands, and he is not to let any one have it to look into. Town. col. 209.

## SECTION XII.

*Order in Debate.*—When the speaker is seated in his chair, every member is to sit in his place. Scob. 6, 3. Grey 403.

When any member means to speak, he is to stand up in his place, uncovered, and to address himself, not to the House, or any particular member, but to the Speaker, who calls him by his name, that the House may take notice who it is that speaks. Scob. 6. D'Ewes 487. Col. 1, 2. Hats. 77. 4 Grey 66, 8. Grey 108. But members who are indisposed may be indulged to speak sitting. 2 Hats. 75, 77. 1, Grey 195.

When a member stands up to speak, no question is to be put, but he is to be heard, unless the House over rule him. 4 Grey 390. 5 Grey 6. 143.

If two or more rise to speak nearly together the Speaker determines who was first up, and calls him by name, whereupon he proceeds, unless he voluntarily sits down and gives way to the other. But sometimes the house does not acquiesce in the speaker's decision, in which case the question is put 'which member was first up?' 2. Hats. 76. Scob. 7. D'Ewes 434. col. 1. 2.

No man may speak more than once to the same bill on the same day; or even on another day if the debate be adjourned. But if it be read more than once in the same day, he may speak once at every reading. Co. 12, 116. Hak. 148. Scob. 58. 2 Hats. 75. Even a change of opinion

does not give a right to be heard a second time. Smyth Comw. L. 2 c. 3. Arcan. Parl. 17.

But he may be permitted to speak again to clear a matter of fact. 3, Grey 357, 416. Or merely to explain himself 2, Hats. 73. in some material part of his speech. ib. 75. Or to the manner or words of the question, keeping himself to that only and not travelling into the merits of it. Memorials in Hakew. 29. Or to the orders of the house if they be transgressed, keeping within that line, and not falling into the matter itself. Mem. in Hakew. 30 31.

But if the speaker rises to speak, the member standing up ought to sit down, that he may be first heard. Town. col. 205. Hale parl. 133. Mem. in Hakew. 30, 31. Nevertheless, though the speaker may of right speak to matters of order and be first heard, he is restrained from speaking on any other subject, except where the house have occasion for facts within his knowledge; then he may, with their leave, state the matter of fact. 3. Grey 38.

No one is to speak impertinently or beside the question, superfluously or tediously. Scob. 31, 33, 2. Hats. 166, 168. Hale parl. 133.

No person is to use indecent language against the proceedings of the house, no prior determination of which is to be reflected on by any member, unless he means to conclude with a motion to rescind it. 2 Hats. 169, 170. Rush. p. 3, v. 1. fol. 42. But while a proposition is under consideration, is still in fieri, though it has even been reported by a committee, reflections on it are no reflections on the house. 9 Grey, 508.

No person in speaking, is to mention a member then present by his name; but to describe him by his seat in the house, or who spoke last, or on the other side of the

question, &c. Mem. in Hakew. 3. Smyth's Comw. L. 2. c. 3. nor to digress from the matter to fall upon the person. Scob. 31. Hale parl. 133. 2. Hats. 166. by speaking, reviling, nipping, or unmannerly words against a particular member. Smyth's Comw. L. 2. c. 3. The consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who propose or advocate it, is a personality, and against order. Qui digreditur a materia ad personam, Mr. Speaker ought to suppress. Ord. Com. 1604. Apr. 19.

No one is to disturb another in his speech by hissing, coughing, spitting. 6 Grey, 332. Scob. 8. D'Ewes 332. col. 1. 640. col. 2. speaking or whispering to another. Scob. 6. D'Ewes 487. col. 1. nor stand up nor interrupt him. Town. col. 205. Mem. in Hakew. 31. nor pass between the Speaker and the speaking member, nor to go across the house. Scob. 6. nor to walk up and down it; or to take books or papers from the table, or write there. 2 Hats. 171.

Nevertheless, if a member finds that it is not the inclination of the house to hear him, and that by conversation or any other noise they endeavour to drown his voice, it is his most prudent way to submit to the pleasure of the House, and sit down; for it scarcely ever happens that they are guilty of this piece of ill manners without sufficient reason, or inattentive to a member who says any thing worth their hearing. 2 Hats. 77, 78.

If repeated calls do not produce order, the Speaker may call by his name any member obstinately persisting in irregularity, whereupon the house may require the member to withdraw. He is then to be heard in exculpation, and

to withdraw. Then the Speaker states the offence committed, and the house considers the degree of punishment they will inflict. 2 Hats. 167, 7, 8, 172.

For instances of assaults and affrays in the House of Commons, and the proceedings thereon. See 1 Pet. Mis. 82. 3 Grey, 128. 4 Grey, 325. 5 Grey, 382. 6 Grey, 254. 10, Grey 8. Whenever warm words, or an assault, have passed between members, the house, for the protection of their members, requires them to declare in their places not to prosecute any quarrel. 8 Grey, 128, 293. 5 Grey, 289. or orders them to attend the Speaker, who is to accommodate their differences and report to the house. 3 Grey, 419. and they are put under restraint if they refuse, or until they do. 9 Grey 235, 312.

Disorderly words are not to be noticed till the member has finished his speech. 5 Grey, 356. 6 Grey, 60. Then the person objecting to them, and desiring them to be taken down by the clerk at the table, must repeat them. The speaker then may direct the clerk to take them down in his minutes. But if he thinks them not disorderly, he delays the direction. If the call becomes pretty general, he orders the clerk to take them down, as stated by the objecting member. They are then part of his minutes, and when read to the offending member, he may deny they were his words, and the house must then decide by a question whether they are his words or not. Then the member may justify them, or explain the sense in which he used them, or apologise. If the house is satisfied, no farther proceeding is necessary. But if two members still insist to take the sense of the house, the member must withdraw before the question is stated, and then the sense

of the house is to be taken. 2 Hats. 199. 4 Grey, 170; 6 Grey, 59. When any member has spoken, or other business intervened, after offensive words spoken, they cannot be taken notice of for censure. And this is for the common security of all, and to prevent mistakes which must happen if words are not taken down immediately. Formerly they might be taken down any time the same day. 2 Hats. 195. Mem. in Hakew. 71. 3 Grey, 48. 9 Grey, 514.

Disorderly words spoken in a committee must be written down as in the house; but the committee can only report them to the house for animadversion. 6 Grey, 46.

In parliament to speak irreverently or seditiously against the King is against order. Smyth's Comw. L. 2. c. 3. 2 Hats. 170.

It is a breach of order in debate to notice what has been said on the same subject in the other house, or the particular votes or majorities on it there: because the opinion of each house should be left to its own dependency, not to be influenced by the proceeding of the other; and the quoring them might beget reflections leading to a misunderstanding between the two houses. 8 Grey, 22.

Neither house can exercise any authority over a member or officer of the other, but should complain to the house of which he is, and leave the punishment to them. Where the complaint is of words disrespectfully spoken by a member of another house, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words) for the security of members. Therefore it is the duty of the House, and more particularly of the Speaker to interfere



immediately, ~~that to permit expressions to go~~  
 unnoted which may give a ground of complaint to the other  
 House, and introduce proceedings and mutual accusations  
 between the two houses, which can hardly be terminated  
 without difficulty and disorder. 3 Hats. 51.

No member may be present when a bill or any business concerning himself is debating; nor is any member to speak to the merits of it till he withdraws. 2 Hats. 219. The rule is that if a charge against a member arise out of a report of a committee or examination of witnesses in the house, as the member knows from that to what points he is to direct his exculpation, he may be heard to those points, before any question is moved or stated against him. He is then to be heard, and withdraw before any question is moved. But if the question itself is the charge, as for breach of order, or matter arising in the debate, there the charge must be stated, that is, the question must be moved, himself heard, and then to withdraw. 2 Hats. 121, 122.

Where the private interests of a member are concerned in a bill or question, he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honour of the house that this rule of immemorial observance, should be strictly adhered to. 2 Hats. 119, 121. 6 Grey, 368.

No member is to come into the house with his head covered, nor to remove from one place to another with his hat on, nor is to put on his hat in coming in, or removing until he be set down in his place. Scob. 6.

~~A question of order~~ may be adjourned to give time to look into precedents. 2 Hats. 418.

All decisions of the Speaker may be controuled by the house. 3 Grey, 319.

### SECTION XIII.

*Orders of the House.*—Of right the door of the house ought not to be shut, but to be kept by porters, or serjeants at arms, assigned for that purpose. Mod. ten. Parl. 23.

The only case where a member has a right to insist on any thing is where he calls for the execution of a subsisting order of the house. Here, there having been already a resolution any member has a right to insist that the Speaker, or any other whose duty it is, shall carry it into execution; and no debate or delay can be had on it. Thus any member has a right to have the house or gallery cleared of strangers, an order existing for that purpose; or to have the house told when there is not a quorum present. 2 Hats. 87, 129. How far an order of the house is binding, see Hakew. 392.

But where an order is made that any particular matter be taken up at a particular day, there a question is to be put when it is called for, whether the house will now proceed to that matter? Where orders of the day are on important or interesting matter, they ought not to be proceeded on till an hour at which the house is usually full.

Orders of the day may be discharged at any time, and a new one made for a different day. 3 Grey, 48. 313.

When a session is drawing to a close, and the important bills are all brought in, the house, in order to prevent

~~immediately, and not to prevent any further~~  
 interruption by further unimportant bills, sometimes come to a resolution that no new bill be brought in, except it be sent from the other house. 3 Grey. 156.

All orders of the house determine with the session; and one taken under such an order may, after the session is ended, be discharged on a habeas corpus. Rym. 120. Jacob's L. D. by Ruffhead. Parliament, 1 Lev. 165. Prichards case.

#### SECTION XIV.

*Petitions.*—A petition prays something. A remonstrance has no prayer. 1 Grey, 58.

Petitions must be subscribed by the petitioners. Scob. 87. L. Parl. c. 22. 9 Grey, 362. unless they are attending. 1 Grey, 401. or unable to sign, and averred by a member. 3 Grey, 418. The averment of a member or of somebody without doors that they know the hand writing of the petitioners is necessary if it be questioned. 6 Grey, 36. It must be presented by a member, not by the petitioners, and must be opened by him, holding it in his hand. 10 Grey, 57.

Regularly a motion for receiving it must be made and seconded, and a question put whether it shall be received? But a cry from the house of 'received,' or even its silence, dispenses with the formality of this question. It is then to be read at the table and disposed of.

#### SECTION XV.

*Motions.*—When a motion has been made, it is not to be put to the question nor debated until it is seconded. Scob. 31.

It is then and not till then in possession of the house, and cannot be withdrawn but by leave of the house. It is to be put into writing, if the House or Speaker require it, and must be read to the House by the Speaker as often as any member desires it for his information. 2 Hats. 82.

It might be asked whether a motion for adjournment or for the orders of the day can be made by one member while another is speaking? It cannot. When two members offer to speak, he who rose first is to be heard, and it is a breach of order in another to interrupt him, unless by calling him to order, if he departs from it. And the question of order being decided, he is still to be heard through call for adjournment, or for the order of the day, or for the A question, by gentlemen from their seats, is not a motion. No motion can be made without rising and addressing the chair. Such calls are themselves breaches of order, which though the member who has risen may respect, as an expression of the impatience of the house against further debate, yet, if he chooses, he has a right to go on.

## SECTION XVI.

*Resolutions.*—When the house commands, it is by an ‘order.’ But facts, principles, their own opinions, and purposes are expressed in the form of resolutions.

## SECTION XVII.

*Bills, Leave to bring in.*—When a member desires to bring in a bill on any subject, he states to the house in general terms, the causes for doing it, and concludes by moving for leave to bring in a bill entitled, &c. Leave being given, on the question, a committee is appointed to pre-

pare and bring in the bill. The mover and seconder are always appointed of this committee, and one or more in addition. Hakew. 132. Scob. 40.

It is to be presented fairly written, without any erasure or interlineation, or the Speaker may refuse it. Scob. 41. 4 Grey, 82, 84.

### SECTION XVIII.

*Bills, First Reading.*—When a bill is first presented, the clerk reads it at the table, and hands it to the Speaker, who, rising, states to the house the title of the bill, that this is the first time of reading it, and the question will be whether it shall be read a second time? Then sitting down to give an opening for objections, if none be made, he rises again and puts the question whether it shall be read a second time? Hakew. 137, 141. A bill cannot be amended at the first reading. 6 Grey, 286. nor is it usual for it to be opposed then: but it may be done and rejected. D'Ewes, 335. col. 1. 3 Hats. 198.

### SECTION XIX.

*Bills, Second Reading.*—The second reading must regularly be on another day. Hakew. 143. It is done by the clerk at the table, who then hands it to the Speaker. The Speaker, rising, states to the house the title of the bill, that this is the second time of reading it, and the question will be whether it shall be committed, or engrossed and read a third time? But if the bill came from the other house, as it always comes engrossed, he states that the question will be whether it shall be read a third time? and before he has so reported the state of the bill, no one is to speak to it. Hakew. 143, 146.

## SECTION XX.

*Bills, Commitment.*—If on motion and question it be decided that the bill shall be committed, it may then be moved to be referred to a committee of the whole house, or to a special committee. If the latter, the Speaker proceeds to name the committee. Any member also may name a single person, and the clerk is to write him down as of the committee. But the house have a controuling power over the names and number, if a question be moved against any one, and may in any case put in and put out whom they please. Those who take exceptions to some particulars in the bill are to be of the committee. But none who speak directly against the body of the bill. For he that would totally destroy, will not amend it. Hakew. 146. Town, col. 208. D'Ewes, 634, col. 2. Scob. 47. or as is said, 5 Grey, 145, the child is not to be put to the nurse that cares not for it. 6 Grey, 373. It is therefore a constant rule 'that no man is to be employed in any matter who has declared himself against it.' And when any member who is against the bill hears himself named of its committee, he ought to ask to be excused. Thus March 7, 1606, Mr. Hadley was, on the question's being put, excused from being of a committee, declaring himself to be against the matter itself. Scob. 46.

The clerk may deliver the bill to any member of the committee. Town. col. 188. But it is usual to deliver it to him who is first named.

In some cases the house has ordered the committee to withdraw immediately into the committee chamber, and act on, and bring back the bill, sitting the house. Scob. 48.

A committee meets when and where they please, if the

house has not ordered time and place for them. 6 Grey, 370. But they can only act when together, and not by separate consultation and consent, nothing being the report of the committee but what has been agreed to in committee actually assembled.

A majority of the committee constitutes a quorum for business. Elsyng's method of passing bills, 41.

Any member of the house may be present at any select committee, but cannot vote, and must give place to all of the committee, and sit below them. Elsyng 12. Scob. 49.

The committee have full power over the bill, or other paper committed to them, except that they cannot change the title or subject. 8 Grey, 228.

The paper before a committee, whether select, or of the whole, may be a bill, resolutions, draught of an address, &c. and it may either originate with them, or be referred to them. In every case, the whole paper is read first by the clerk, and then by the chairman by paragraphs. Scob. 49. pausing at the end of each paragraph, and putting questions for amending, if proposed. In the case of resolutions on distinct subjects, originating with themselves, a question is put on each separately, as amended, or unamended, and no final question on the whole. 3 Hats. 276. But if they relate to the same subject, a question is put on the whole. If it be a bill, draught of an address, or other paper originating with them, they proceed by paragraphs, putting questions for amending, either by insertion or striking out, if proposed: but no question on agreeing to the paragraphs separately. This is reserved to the close, when a question is put on the whole, for agreeing to it as amended, or unamended. But if it be a paper referred to them, they proceed to put questions of amendment, if

proposed, but no final question on the whole: because all parts of the paper having been adopted by the House, stand of course, unless altered, or struck out by a vote. Even if they are opposed to the whole paper, and think it cannot be made good by amendments, they cannot reject it, but must report it back to the house without amendments, and there make their opposition. The natural order in considering and amending any paper is, to begin at the beginning, and proceed through it by paragraphs; and this order is so strictly adhered to in parliament, that when a latter part has been amended, you cannot recur back and make any alteration in a former part. 2 Hats. 90. In numerous assemblies this restraint is doubtless important.

To this natural order of beginning at the beginning, there is a single exception found in parliamentary usage. When a bill is taken up in committee, or on its second reading, they postpone the preamble, till the other parts of the bill are gone through. The reason is that on consideration of the body of the bill such alterations may therein be made as may also occasion the alteration of the preamble. Scob. 50. 7 Grey 431.

When the committee is through the whole a member moves that the committee may rise and the chairman report the paper to the House, with or without amendments, as the case may be. 2 Hats. 289, 292. Scob. 53. 2 Hats. 290. 8 Scob. 50.

When a vote is once passed in a committee, it cannot be altered but by the house, their votes being binding on themselves. 1607, June 4.

The committee may not erase, interline or blot the bill itself; but must in a paper by itself, set down the amendments, stating the words which are to be inserted or omit-



ted. Scob. 50. and where, by references to the page, line and word of the bill. Scob. 50.

## SECTION XXI.

*Report of Committee.*—The chairman of the committee, standing in his place, informs the house that the committee to whom was referred such a bill, have according to order, had the same under consideration, and have directed him to report the same without any amendment, or with sundry amendments, (as the case may be) which he is ready to when the house pleases to receive it. And he, or any other may move that it be now received. But the cry of 'now, now,' from the house, generally dispenses with the formality of a motion and question. He then reads the amendments with the coherence in the bill, and opens the alterations, and the reasons of the committee for such amendments until he has gone through the whole. He then delivers it at the clerk's table, where the amendments reported are read by the clerk, without the coherence, whereupon the papers lie on the table till the house at its convenience shall take up the report. Scob. 52. Hakew. 148.

The report being made, the committee is dissolved and can act no more without a new power. Scob. 51. But it may be revived by a vote, and the same matter recommit-  
ted to them. 4 Grey, 361.

## SECTION XXII.

*Bill, Recommitment.*—After a bill has been committed and reported, it ought not, in an ordinary course to be re-committed. But in cases of importance, and for special reasons, it is sometimes recommitted, and usually to the

same committee. Hakew. 151. If a report be recommitted before agreed to in the house, what has passed in committee is of no validity; the whole question is again before the committee, and a new resolution must be again moved, as if nothing had passed. 3 Hats. 131. note.

A particular clause of a bill may be committed without the whole bill. 3 Hats. 131, or so much of a paper to one, and so much to another committee.

### SECTION XXIII.

*Bill, Report taken up.*—When the report of a paper originating with a committee is taken up by the house, they proceed exactly as in committee. Here, as in committee, when the paragraphs have, on distinct questions, been agreed to seriatim, 5 Grey, 366. 6 Grey 368. 8 Grey, 47, 104, 360. 1 Torbuck's deb. 125. 3 Hats. 348. no question needs be put on the whole report. 5 Grey 381.

On taking up a bill reported with amendments, the amendments only are read by the clerk. The Speaker then reads the first, and puts it to the question, and so on till the whole are adopted or rejected, before any other amendment be admitted, except it be an amendment to an amendment. Elsynge's Mem. 53. When through the amendments of the committee, the Speaker pauses, and gives time for amendments to be proposed in the House to the body of the bill: as he does also if it has been reported without amendments; putting no questions but on amendments proposed: and when through the whole, he puts the question whether the bill shall be read a third time?

## SECTION XXIV.

*Quasi-Committee.*—The particulars in which these differ from proceeding in the house are the following. 1. In a committee every member may speak as often as he pleases. 2. The votes of a committee may be rejected or altered when reported to the house. 3. A committee, even of the whole, cannot refer any matter to another committee. 4. In a committee no previous question can be taken. The only means to avoid an improper discussion is to move that the committee rise : and if it be apprehended that the same discussion will be attempted on returning into committee, the house can discharge them, and proceed itself on the business, keeping down the improper discussion by the previous question. 5. A committee cannot punish a breach of order, in the house, or in the gallery, 9 Grey, 113. It can only rise and report it to the house, who may proceed to punish.

## SECTION XXV.

*Bill, Second Reading in the House.*—In parliament, after the bill has been read a second time, if, on the motion and question, it be not committed, or if no proposition for commitment be made, the Speaker reads it by paragraphs, pausing between each, but putting no question but on amendments proposed ; and when through the whole, he puts the question whether it shall be read a third time ? if it came from the other house. Or, if originating with themselves, whether it shall be engrossed and read a third time ? The Speaker reads sitting, but rises to put questions. The clerk stands while he reads.

The bill being now as perfect as its friends can make

it, this is the proper stage for those fundamentally opposed, to make their first attack. All attempts at earlier periods are with disjointed efforts; because many who do not expect to be in favour of the bill ultimately, are willing to let it go on to its perfect state, to take time to examine it themselves, and to hear what can be said for it; knowing that, after all, they will have sufficient opportunities of giving it their veto. Its two last stages therefore are reserved for this, that is to say, on the question whether it shall be read a third time? And lastly whether it shall pass? The first of these is usually the most interesting contest; because then the whole subject is new and engaging, and the minds of the members having not yet been declared by any trying vote, the issue is the more doubtful. In this stage therefore is the main trial of its strength between its friends and opponents: and it behoves every one to make up his mind decisively for this question, or he loses the main battle; and accident and management may, and often do, prevent a successful rallying on the next and last question whether it shall pass?

When the bill is engrossed, the title is to be endorsed on the back, and not within the bill. Hakew, 250.

## SECTION XXVI.

*Reading Papers.*—Where papers are laid before the House, or referred to a committee, every member has a right to have them once read at the table, before he can be compelled to vote on them. But it is a great, though common error, to suppose that he has a right, *toties quoties*, to have acts, journals, accounts or papers on the table read independently of the will of the House. The delay and interruption which this might be made to produce, evince

the impossibility of the existence of such right. There is indeed so manifest a propriety of permitting every member to have as much information as possible on every question on which he is to vote, that when he desires the reading, if it be seen that it is really for information, and not for delay, the Speaker directs it to be read without putting the question, if no one objects. But if objected to, a question must be put. 2, Hats. 117, 118.

It is equally an error to suppose that any member has a right without a question put, to lay a book or paper on the table, and have it read, on suggesting that it contains matter infringing on the privileges of the house. *ib.*

For the same reason a member has not a right to read a paper in his place, if it be objected to, without leave of the house. But this rigour is never exercised, but where there is an intentional or gross abuse of the time and patience of the House.

A member has not a right even to read his own speech, committed to writing, without leave. This also is to prevent an abuse of time; and therefore, is not refused, but where that is intended. 2 Grey, 227.

Formerly when papers were referred to a committee, they used to be first read: but of late, only the titles; unless a member insists they shall be read, and then nobody can oppose it. 2 Hats. 117

## SECTION XXVII.

*Privileged Questions.*—It is no possession of a bill unless it be delivered to the clerk to be read, or the Speaker reads the title. Lex. Parl. 274. Elsynge mem. 95. Ord. House of Commons, 64.

It is a general rule that the question first moved and seconded shall be first put. *Scob. 28. 22. 2 Hats. 81.* But this rule gives way to what may be called Privileged questions; and the privileged questions are of different degrees among themselves.

A motion to adjourn simply takes place of all others; for otherwise the House might be kept sitting against its will, and indefinitely. Yet this motion cannot be received after another question is actually put, and while the House is engaged in voting.

Orders of the day take place of all other questions, except for adjournment. That is to say the question which is the subject of an order is made a privileged one *pro hac vice*. The order is a repeal of the general rule as to this special case. When any member moves therefore for the orders of the day to be read, no further debate is permitted on the question which was before the house; for if the debate might proceed, it might continue through the day and defeat the order. This motion, to entitle it to precedence, must be for the orders generally, and not for any particular one; and if it be carried on the question, 'whether the house will now proceed to the orders of the day,' they must be read and proceeded on in the course in which they stand. *2 Hats. 83.* For priority of order gives priority of right, which cannot be taken away but by another special order. After these there are other privileged questions which will require considerable explanation.

It is proper that every parliamentary assembly should have certain forms of question so adapted, as to enable them fitly to dispose of every proposition which can be made to them. Such are 1. The Previous Question. 2.

To postpone indefinitely. 3. To adjourn a question to a definite day. 4. To lie on the table. 5. To commit. 6. To amend. The proper occasion for each of these questions should be understood.

1. When a proposition is moved, which it is useless or inexpedient now to express or discuss, the previous question has been introduced for suppressing for that time the motion and its discussion. 3, Hats. 188, 189.

2. But as the Pr. Qu. gets rid of it only for that day, and the same proposition may recur the next day, if they wish to suppress it for the whole of that session, they postpone it indefinitely, 3 Hats. 183. This quashes the proposition for that session, as an indefinite adjournment is a dissolution, or the continuance of a suit sine die is a discontinuance of it.

3. When a motion is made which it will be proper to act on, but information is wanted, or something more pressing claims the present time, the question or debate is adjourned to such a day within the session as will answer the views of the House. 2, Hats. 81. And those who have spoken before may not speak again when the adjourned debate is resumed: 2 Hats. 73. Sometimes however, this has been abusively used by adjourning it to a day beyond the session, to get rid of it altogether, as would be done by an indefinite postponement.

4. When the House has something else which claims its present attention, but would be willing to reserve in their power to take up a proposition whenever it shall suit them, they order it to lie on the table. It may then be called for at any time.

5. If the proposition will want more amendment and digestion than the formalities of the house will conveniently admit, they refer it to a committee.

6. But if the proposition will be digested and may need but few and simple amendments, and especially if these be of leading consequence, they then proceed to consider and amend it themselves.

But it may be asked, have these questions any privilege among themselves? Or are they so equal that the common principle of the "first moved, first put" takes place among them? This will need explanation. Their competitions may be as follow :

|                           |   |                                                                                                                               |  |  |
|---------------------------|---|-------------------------------------------------------------------------------------------------------------------------------|--|--|
| 1. Prev. Qu. and Postpone | } | In the first, second, and third classes and the 1st member of the fourth class, the rule "first moved first put" takes place. |  |  |
| Commit                    |   |                                                                                                                               |  |  |
| Amend                     |   |                                                                                                                               |  |  |
| 2. Postpone and Prev. Qu. |   |                                                                                                                               |  |  |
| Commit                    | } |                                                                                                                               |  |  |
| Amend                     |   |                                                                                                                               |  |  |
| 3. Commit and Prev. Qu.   |   |                                                                                                                               |  |  |
| Postpone                  |   |                                                                                                                               |  |  |
| Amend                     | } |                                                                                                                               |  |  |
| 4. Amend and Prev. Qu.    |   |                                                                                                                               |  |  |
| Postpone                  |   |                                                                                                                               |  |  |
| Commit                    |   |                                                                                                                               |  |  |

In the 1st class where the P. Q. is first moved, the effect is peculiar. For it not only prevents the after motion to postpone or commit from being put to question before it, but also from being put after it. For if the P. Q. be decided affirmatively, to wit, that the M. Q. shall *now* be put, it would of course be against the decision to postpone or commit. And if it be decided negatively, to wit, that the M. Q. shall *now* be put, this puts the house out of possession of the M. Q. and consequently there is nothing before them to postpone or commit. So that neither voting for



or against the P. Q. will enable the advocates for postponing or committing to get at their object. Whether it may be amended shall be examined hereafter.

2d class. If postponement be decided affirmatively, the proposition is removed from before the house, and consequently there is no ground for the P. Q. commitment, or amendment. But, if decided negatively, that it shall not be postponed, the M. Q. may then be suppressed by the P. Q. or may be committed, or amended.

The 3d class is subject to the same observations as the 2nd.

The 4th class. Amendment of the M. Q. first moved, and afterwards the P. Q. the question of amendment shall be first put.

Amendment and postponement competing, postponement is first put, as the equivalent proposition to adjourn the M. Q. would be in parliament. The reason is that the question for amendment is not suppressed by postponing or adjourning the M. Q. but remains before the House whenever the M. Q. is resumed: and it might be that the occasion for other urgent business might go by, and be lost by length of debate on the amendment, if the house had it not in their power to postpone the whole subject.

Amendment and commitment. The question for committing though last moved shall be first put: because in truth it facilitates and befriends the motion to amend. Scobell is express. "On a motion to amend a bill, any one may notwithstanding move to commit it, and the question for commitment shall be first put." Scob. 46.

We have hitherto considered the case of two or more of the privileged questions contending for privilege between themselves, when both were moved on the original or M.

Q. but now let us suppose one of them to be moved, not on the original primary question, but on the secondary one.

e. g.

Suppose a motion to postpone, commit or amend the M. Q. and that it be moved to suppress that motion by putting a previous question on it. This is not allowed: because it would embarrass questions too much to allow them to be piled on one another several stories high; and the same result may be had in a more simple way, by deciding against the postponement, commitment or amendment. 2 Hats. 81, 2, 3, 4.

Suppose a motion for the Previous Question or commitment or amendment of the Main Question, and that it be then moved to postpone the motion for the Previous Question, or for commitment or amendment of the Main Question. 1. It would be absurd to postpone the previous question, commitment or amendment alone, and thus separate the appendage from its principal. Yet it must be postponed separately from its original, if at all. Therefore the motion to postpone the secondary motion for the previous question or for committing or amending, cannot be received. 2. This is a piling of questions one on another, which, to avoid embarrassment, is not allowed. 3. The same result may be had more simply by voting against the previous question, commitment or amendment.

Suppose a commitment moved of a motion for the previous question, or to postpone or amend. The 1st, 2d, and 3d reasons before stated all hold good against this.

Suppose an amendment moved to a motion for the previous question. Answer: The previous question cannot be amended. Parliamentary usage has fixed its form to be 'Shall the main question be now put?' i. e. at this in-

stant. And as the present instant is but one, it can admit of no modification. To change it to tomorrow, or any other moment, is without example, and without utility. But suppose a motion to amend a motion for postponement; as to one day instead of another, or to a special instead of a definite time. The useful character of amendment gives it a privilege of attaching itself to a secondary and privileged motion. That is, we may amend a postponement of a main question. So we may amend a commitment of a main question, as by adding, for example 'with instructions to enquire, &c.' In like manner, if an amendment be moved to an amendment, it is admitted. But it would not be admitted in any other degree; to wit, to amend an amendment to an amendment, of a M. Q. This would lead to too much embarrassment. The line must be drawn somewhere, and usage has drawn it after the amendment to the amendment. The same result must be sought by deciding against the amendment to the amendment, and then moving it again as it was wished to be amended. In this form it becomes only an amendment to an amendment.

*finding blanks,*  
 Contrary to the rule of parliament which privileges the smallest sum and longest time. 5 Grey, 179. 2 Hats. 81, 83. 3 Hats, 132, 133. And this is considered to be not in the form of an amendment to the question; but as alternative, or successive originals. In all cases of time or number, we must consider whether the larger comprehends the lesser, as in a question to what day a postponement shall be, the number of a committee, amount of a fine, term of an imprisonment, term of irredeemability of a loan, or the terminus in quem, in any other case. Then the question must begin a maximo. Or whether the lesser con-

cludes the greater, as in questions on the limitation of the rate of interest, on what day the session shall be closed by adjournment, on what day the next shall commence, when an act shall commence, or terminus a quo in any other case where the question must begin a minimo. The object being not to begin at the extreme, which, and more, being within every man's wish, no one could negative it, and yet, if he should vote in the affirmative, every question for more would be precluded; but at that extreme which would unite few, and then to advance or recede till you get to a number which will unite a bare majority. 3 Grey, 376, 384, 385. "The fair question in this case is not that to which and more all will agree, but whether there shall be addition to the question". 1 Grey, 365.

Another exception to the rule of priority is when a motion has been made to strike out, or agree to a paragraph. Motions to amend it are to be put to the question before a vote is taken on striking out, or agreeing to the whole paragraph.

But there are several questions, which being incidental to every one, will take place of every one, privileged or not, to wit, a question of order arising out of any other question, must be decided before that question. 2 Hats. 88.

A matter of privilege arising out of any question, or from a quarrel between two members, or any other cause, supersedes the consideration of the original question, and must be first disposed of. 2 Hats. 88.

Reading papers relative to the question before the house. This question must be put before the principal one. 2 Hats. 88.

Leave asked to withdraw a motion. The rule of Parliament being that a motion made and seconded is impos-

session of the House, and cannot be withdrawn without leave, the very terms of the rule imply that leave may be given, and consequently may be asked and put to the question.

### SECTION XXVIII.

*The Previous Question* — When any question is before the House, any member may move a previous question ‘Whether that question (called the main question) shall now be put?’ If it pass in the affirmative, then the main question is to be put immediately, and no man may speak any thing further to it, either to add or alter. Memor. in Hakew. 28. 4, Grey, 27.

The previous question being moved and seconded, the question from the chair shall be ‘Shall the main question be now put?’ and if the nays prevail, the main question shall not then be put.

This kind of question is understood by Mr. Hatsell to have been introduced in 1604. 2 Hats. 80. Sir Henry Vane introduced it. 2 Grey, 113, 114. 3 Grey, 384. When the question was put in this form, ‘Shall the main question be put?’ A determination in the negative suppressed the main question during the session; but since the words ‘now put’ are used, they exclude it for the present only. Formerly indeed only till the present debate was over. 4 Grey 43. but now for that day and no longer. 2 Grey, 113, 114.

Before the question ‘whether the main question shall now be put?’ any person might formerly have spoken to the main question, because otherwise he would be precluded from speaking to it at all. Mem. in Hakew. 28.

The proper occasion for the previous question is when

a subject is brought forward of a delicate nature as to high personages, &c. or the discussion of which may call forth observations, which might be of injurious consequences. Then the previous question is proposed ; and, in the modern usage, the discussion of the main question is suspended, and the debate confined to the previous question. The use of it has been extended abusively to other cases : but in these it is an embarrassing procedure : its uses would be as well answered by other more simple parliamentary forms, and therefore it should not be favoured, but restricted within as narrow limits as possible.

Whether a main question may be amended after the previous question on it has been moved and seconded ? 2 Hats. 88, says, if the previous question has been moved and seconded, and also proposed from the chair, (by which he means stated by the Speaker for debate) it has been doubted whether an amendment can be admitted to the main question ? He thinks it may, after the previous question moved and seconded ; but not after it has been proposed from the chair. In this case he thinks the friends to the amendment must vote that the main question be not now put ; and then move their amended question, which being made new by the amendment, is no longer the same which has been just suppressed, and therefore may be proposed as a new one. But this proceeding certainly endangers the main question by dividing its friends, some of whom may choose it unamended, rather than lose it altogether : while others of them may vote, as Hatsell advises, that the main question be <sup>not</sup> now put, with a view to move it again in an amended form. The enemies to the main question, by this manœuvre of the previous question, get the enemies to the amendment added to them on the first

vote, and throw the friends of the main question under the embarrassment of rallying again as they can. To support his opinion too, he makes the deciding circumstance, whether an amendment may or may not be made, to be that the previous question has been proposed from the chair. But as the rule is that the House is in possession of a question as soon as it is moved and seconded, it cannot be more than possessed of it by its being also proposed from the chair. It may be said indeed, that the object of the previous question being to get rid of a question, which it is not expedient should be discussed, this object may be defeated by moving to amend, and, in the discussion of that motion, involving the subject of the main question. But so may the object of the previous question be defeated by moving the amended question, as Mr. Hatsell proposes, after the decision against putting the original question. He acknowledges too that the practice has been to admit previous amendment, and only cites a few late instances to the contrary. On the whole I should think it best to decide it *ab inconvenienti*, to wit, which is most inconvenient, to put it in the power of one side of the house to defeat a proposition by hastily moving the previous question, and thus forcing the main question to be put unamended; or to put in the power of the other side to force on, incidentally at least, a discussion which would be better avoided? Perhaps the last is the least inconvenience; inasmuch as the Speaker, by confining the discussion rigorously to the amendment only, may prevent their going into the main question, and inasmuch also as so great a proportion of the cases in which the previous question is called for, are fair and proper subjects of public discussion, and ought not to be obstructed by a formality introduced for questions of a peculiar character.

## SECTION XXIX.

*Amendments.*—On an amendment being moved, a member who has spoken to the main question may speak again to the amendment. Scob. 23.

If an amendment be proposed inconsistent with one already agreed to, it is a fit ground for its rejection by the House; but not within the competence of the Speaker to suppress as if it were against order. For were he permitted to draw questions of consistence within the vortex of order, he might usurp a negative on important modifications, and suppress, instead of subserving the legislative will.

Amendments may be made so as totally to alter the nature of the proposition; and it is a way of getting rid of a proposition, by making it bear a sense different from what was intended by the movers, so that they vote against it themselves. 2 Hats. 79. 4, 82, 84. A new bill may be ingrafted by way of amendment on the words 'be it enacted, &c.' 1 Grey, 190, 192.

If it be proposed to amend by leaving out certain words, it may be moved as amendment to this amendment to leave out a part of the words of the amendment, which is equivalent to leaving them in the bill. 2 Hats. 80, 9. The parliamentary question is always whether the words shall stand part of the bill?

When it is proposed to amend by inserting a paragraph or part of one, the friends of the paragraph may make it as perfect as they can by amendments, before the question is put for inserting it. If it be received, it cannot be amended afterwards, in the same stage; because the house has on a vote, agreed to it in that form. In like manner if it is proposed to amend by striking out a paragraph, the



friends of the paragraph are first to make it as perfect as they can by amendments, before the question is put for striking it out. If on the question it be retained, it cannot be amended afterwards : because a vote against striking out is equivalent to a vote agreeing to it in that form.

When it is moved to amend, by striking out certain words, and inserting others, the manner of stating the question is first to read the whole passage to be amended as it stands at present, then the words proposed to be struck out, next those to be inserted, and lastly the whole passage as it will be when amended. And the question, if desired, is then to be divided, and put first on striking out. If carried, it is next on inserting the words proposed. If that be lost, it may be moved to insert others, 2. Hats. 80. 7.

A motion is made to amend by striking out certain words, and inserting others in their place, which is negatived. Then it is moved to strike out the same words, and to insert others of a tenor entirely different from those first proposed. It is negatived. Then it is moved to strike out the same words and insert nothing, which is agreed to. All this is admissable ; because to strike out and insert A. is one proposition. To strike out and insert B. is a different proposition. And to strike out and insert nothing is still different. And the rejection of one proposition does not preclude the offering a different one. Nor would it change the case were the first motion divided by putting the question first on striking out, and that negatived. For as putting the whole motion to the question at once, would not have precluded, the putting the half of it cannot do it.

But if it had been carried affirmatively to strike out the

words and to insert A, it could not afterwards be permitted to strike out A. and insert B. The mover of B. should have notified while the insertion of A. was under debate, that he would move to insert B. In which case those who preferred it would join in rejecting A.

After A is inserted, however, it may be moved to strike out a portion of the original paragraph, comprehending A. provided the coherence to be struck out be so substantial as to make this effectively a different proposition. For then it is resolved into the common case of striking out a paragraph after amending it. Nor does any thing forbid a new insertion, instead of A. and its coherence.

When the matter contained in two bills might be better put into one, the manner is to reject the one, and incorporate its matter into another bill by way of amendment. So if the matter of one bill would be better distributed into two, any part may be struck out by way of amendment, and put into a new bill. If a section is to be transposed, a question must be put on striking it out where it stands, and another for inserting it in the place desired.

A bill passed by the one house with blanks. These may be filled up by the other by way of amendments, returned to the first as such and passed. 3 Hats. 83.

The number prefixed to the section of a bill, being merely a marginal indication, and no part of the text of the bill, the clerk regulates that, the house or committee is only to amend the text.

### SECTION XXX.

*Division of the Question.*—If a question contain more parts than one, it may be divided into two or more questions. Mem. in Hakew. 29. But not as the right of an

individual member, but with the consent of the house. For who is to decide whether a question is complicated or not? where it is complicated? into how many propositions it may be divided? The fact is, that the only mode of separating a complicated question is by moving amendments to it; and these must be decided by the House on a question: unless the house orders it to be divided: as on the question Dec. 2, 1640, making void the election of the knights for Worcester, on a motion it was resolved, to make two questions of it, to wit, one on each knight. 2 Hats. 85, 86. So wherever there are several names in a question, they may be divided and put one by one. 9 Grey 444. So 1729, April 17, on an objection that a question was complicated, it was separated by amendment. 2 Hats. 79, 5.

### SECTION XXXI.

*Co-existing Questions.*—It may be asked whether the House can be in possession of two motions or propositions at the same time? So that, one of them being decided, the other goes to question without being moved anew? The answer must be special. When a question is interrupted by a vote of adjournment, it is thereby removed from before the House, and does not stand *ipso facto* before them at their next meeting: but must come forward in the usual way. So, when it is interrupted by the order of the day. Such other privileged questions also as dispose of the main question (e. g. the previous question, postponement or commitment) remove it from before the house. But it is only suspended by a motion to amend, to withdraw, to read papers, or by a question of order or privilege, and stands again before the house when these are decided. None but the class of privileged questions

can be brought forward while there is another question before the house, the rule being that when a motion has been made and seconded, no other can be received, except it be a privileged one.

### SECTION XXXII.

*Equivalent Questions.*—If, on a question for rejection, a bill be retained, it passes of course to its next reading. *Liakew.* 141. *Scob.* 42. And a question for a second reading, determined negatively, is a rejection without farther question. 4 *Grey* 149. And see *Elcynge's* memor 42. in what cases questions are to be taken for rejection.

Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leaves no other alternative, the decision of the one concludes necessarily the other. 4. *Grey.* 157. Thus the negative of striking out amounts to the affirmative of agreeing; and therefore to put a question on agreeing after that on striking out, would be to put the same question in effect twice over. Not so in questions of amendments between the two houses. A motion to recede being negatived, does not amount to a positive vote to insist, because there is another alternative, to wit, to adhere.

A bill originating in one house, is passed by the other with an amendment. A motion in the originating House to agree to the amendment is negatived. Does there result from this a vote of disagreement, or must the question on disagreement be expressly voted? The questions respecting amendments from another house are, 1st. to agree, 2d disagree, 3d recede, 4th insist, 5th adhere..

1st, To agree. 2d, To disagree. Either of these concludes the other necessarily, for the positive of either is exactly the equivalent of the negative of the other, and no other alternative remains. On either motion amendments to the amendment may be proposed, e. g. if it be moved to disagree, those who are for the amendment have a right to propose amendments, and to make it as perfect as they can, before the question of disagreeing is put.

3d. To recede. You may then either insist or adhere.

4th. To insist. You may then either recede or adhere.

5th. To adhere. You may then either recede or insist.

Consequently the negative of these is not equivalent to a positive vote, the other way. It does not raise so necessary an implication as may authorise the <sup>Speaker</sup> ~~Secretary~~ by inference to enter another vote: for two alternatives still remain, either of which may be adopted by the house.

### SECTION XXXIII.

*The Question.*—The question is to be put first on the affirmative, and then on the negative side.

After the Speaker has put the affirmative part of the question, any member who has not spoken before to the question, may rise and speak before the negative be put. Because it is no full question till the negative part be put.

Scob 23. 2 Hats 73.

But in small matters, and which are of course, such as receiving petitions, reports, withdrawing motions, reading papers, &c. the Speaker most commonly supposes the consent of the house, where no objection is expressed, and does not give them the trouble of putting the question formally. Scob. 32. 2 Hats. 79. 2, 87. 5 Grey. 129. 9 Grey. 301.

## SECTION XXXIV.

*Bills, Third Reading.*—To prevent bills from being passed by surprise, the house by a standing order directs that they shall not be put on their passage before a fixed hour, naming one at which the house is commonly full. Hakew. 153.

A bill reported and passed on the 3d reading cannot on that day be read the 3d time and passed. Because this would be to pass on two readings in the same day.

At the 3d reading the clerk reads the bill and delivers it to the Speaker, who states the title, that it is the third time of reading the bill, and that the question will be whether it shall pass? Formerly the Speaker or those who prepared a bill, prepared also a breviate or summary statement of its contents, which the speaker read when he declared the state of the bill, at the several readings. Sometimes however, he read the bill itself, especially on its passage. Hakew. 136, 137, 153. Coke, 22, 115. Latterly, instead of this, he, at the third reading, states the whole contents of the bill verbatim, only instead of reading the formal parts, 'Be it enacted, &c,' he states that 'the preamble recites so and so--the 1st section enacts that, &c. the 2d section enacts, &c.'

A bill on the 3d reading is not to be committed for the matter or body thereof; but to receive some particular clause or proviso, it hath been sometimes suffered, but as a thing very unusual. Hakew. 156. Thus 27 El. 1584. a bill was committed on the third reading, having been formerly committed on the 2d, but is declared not usual. D'Ewes 337, col. 2. 414, col. 2.

When an essential provision has been omitted, rather than erase the bill, and render it suspicious, they add a

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clause on a separate paper, engrossed and called a Ryder, which is read and put to the question three times. El-synge's memorials 39. 6 Grey, 335. 1 Blackst. 183. For examples of ryders see 3 Hats. 121, 122, 124, 126. Every one is at liberty to bring in a ryder without asking leave. 10 Grey, 52.

It is laid down as a general rule that amendments proposed at the 2d reading shall be twice read, and those proposed at the 3d reading thrice read; as also all amendments from the other house. Town. col. 19, 23, 24, 25, 26, 27, 28.

It is with great and almost invincible reluctance, that amendments are admitted at this reading which occasion erasures or interlineations. Sometimes a proviso has been cut off from a bill; sometimes erased. 9 Grey, 513.

This is the proper stage for filling up blanks; for if filled up before, and now altered by erasure, it would be peculiarly unsafe.

At this reading the bill is debated afresh, and for the most part is more spoken to, at this time, than on any of the former readings. Hakew. 153.

The debate on the question whether it should be read a third time? has discovered to its friends and opponents the arguments on which each side relies, and which of these appear to have influence with the house; they have had time to meet them with new arguments, and to put their old ones into new shapes. The former vote has tried the strength of the first opinion and furnished grounds to estimate the issue; and the question now offered for its passage, is the last occasion which is ever to be offered for carrying or rejecting it.

When the debate is ended, the Speaker, holding the bill in his hand, puts the question for its passage, by saying 'Gentlemen, all you who are of opinion that this bill shall pass, say aye,' and after the answer of the ayes, 'All those of the contrary opinion say no.' Hakew. 154.

After the bill is passed, there can be no further alteration of it in any point. Hakew. 159.

### SECTION XXXV.

*Division of the House.*—The affirmative and negative of the question having been both put and answered, the Speaker declares whether the Yeas or Nays have it by the sound, if he be himself satisfied, and it stands as the judgment of the house. But if he be not himself satisfied which voice is the greater, or if, before any other member comes into the house, or before any new motion made (for it is too late after that) any member shall rise and declare himself dissatisfied with the speaker's decision, then the Speaker is to divide the house. Scob. 24. 2 Hats. 140.

When the house of commons is divided, the one party goes forth, and the other remains in the house. This has made it important which go forth, and which remain: because the latter gain all the indolent, the indifferent and inattentive, their general rule therefore is that those who give their votes for the preservation of the orders of the house, shall stay in, and those who are for introducing any new matter or alteration, or proceeding contrary to the established course, are to go out. But this rule is subject to many exceptions & modifications. 2 Hats. 134. 1 Rush. p. 3, fol. 92. Scob. 43, 52. Co. 12, 116. D'Ewes, 505, col. 1. Mem. in Hakew. 25, 29.

The one party being gone forth, the speaker names two



tellers from the affirmative, and two from the negative side, who first count those sitting in the House, and report the number to the Speaker. Then they place themselves within the door, two on each side, and count those who went forth, as they come in, and report the number to the Speaker. Mem. in Hakew. 26.

A mistake in the report of the tellers may be rectified after the report made. 2 Hats. 145. note.

In the House of Commons every member must give his vote the one way or the other. Scob. 24. As it is not permitted to any one to withdraw who is in the House when the question is put, nor is any one to be told in the division who was not in when the question was put. 2 Hats. 140.

This last position is always true when the vote is by yeas and nays; where the negative as well as affirmative of the question is stated by the Speaker at the same time, and the vote of both sides begins and proceeds *pari passu*.

It is true also when the question is put in the usual way, if the negative has also been put. But if it has not, the member entering, or any other member may speak, and even propose amendments, by which the debate may be opened again, and the question be greatly deferred. And as some who have answered aye, may have been changed by the new arguments, the affirmative must be put over again. If then the member entering may, by speaking a few words, occasion a repetition of the question, it would be useless to deny it on his simple call for it.

While the house is telling, no member may speak or move out of his place; for if any mistake be suspected, it must be told again. Mem. in Hakew. 26. 2 Hats. 143.

If any difficulty arises in point of order during the divi-

sion, the Speaker is to decide peremptorily, subject to the future censure of the House if irregular. He sometimes permits old experienced members to assist him with their advice, which they do, sitting in their seats, covered, to avoid the appearance of debate; but this can only be with the Speaker's leave, else the division might last several hours. 2 Hats. 143.

The voice of the majority decides. For the *lex majoris partis* is the law of all councils elections, &c. where not otherwise expressly provided. Hakew. 93. But if the house be equally divided, '*semper presumatur pro negante*:' that is, the former law is not to be changed but by a majority. Towns. coll. 134.

When from counting the House on a division, it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day. 2 Hats. 126.

1606, May 1, on a question whether a member having said yea, may afterwards sit and change his opinion? A precedent was remembered by the Speaker, of Mr. Morris, attorney of the wards, in 39 Eliz. who in like case changed his opinion Mem. in Hakew. 27.

### SECTION XXXVI.

*Title.*—After the Bill has passed, and not before, the title may be amended, and is to be fixed by a question; and the bill is then sent to the other House.

### SECTION XXXVII.

*Reconsideration.*—In Parliament, a question once carried cannot be questioned again, at the same session; but must stand as the judgment of the House. Towns coll.

67. Mem. in Hakew. 33. And a Bill once rejected, another of the same substance cannot be brought in again the same session. Hakew. 158. 6 Grey, 392. But this does not extend to prevent putting the same question in different stages of a bill; because every stage of a bill submits the whole and every part of it to the opinion of the House, as open for amendment, either by insertion or omission, though the same amendment has been accepted or rejected in a former stage. So in reports of committees, e. g. report of an address, the same question is before the house, and open for free discussion. Towns coll. 26. 2 Hats. 98, 100, 101. So orders of the House, or instructions to committees may be discharged. So a bill, begun in one House, sent to the other, and there rejected, may be renewed again in that other, passed and sent back. *ib.* 92. 3 Hats. 161. Or if, instead of being rejected, they read it once and lay it aside, or amend it, and put it off a month, they may order in another to the same effect, with the same or a different title. Hakew. 97, 98.

Divers expedients are used to correct the effects of this rule; as by passing an explanatory act, if any thing has been omitted or ill expressed, 3 Hats. 278, or an act to enforce and make more effectual an act, &c. or to rectify mistakes in an act, &c. or a committee on one bill may be instructed to receive a clause to rectify the mistakes of another. Thus, June 24, 1685, a clause was inserted in a bill for rectifying a mistake committed by a clerk in engrossing a bill of supply. 2 Hats. 194, 6. Or the session may be closed for one, two, three or more days, and a new one commenced. But then all matters depending must be finished, or they fall, and are to begin *de novo*. 2 Hats. 94, to 98. Or a part of the subject may be taken up by ano-

ther bill, or taken up in a different way. 6 Grey. 304, 316.

And in cases of the last magnitude, this rule has not been so strictly and verbally observed as to stop indispensable proceedings altogether. 2 Hats. 92, 98. Thus when the address on the preliminaries of peace in 1782, had been lost by a majority of one, on account of the importance of the question, and smallness of the majority, the same question in substance though with some words not in the first, and which might change the opinion of some members, was brought on again and carried; as the motives for it were thought to outweigh the objection of form. 2 Hats. 99, 100.

A second bill may be passed to continue an act of the same session; or to enlarge the time limited for its execution. 2 Hats. 95, 98. This is not in contradiction to the first act.

### SECTION XXXVIII.

*Bills sent to the other House.*—A bill from the other house is sometimes ordered to lie on the table. 2 Hats. 97.

When bills, passed in one house and sent to the other, are grounded on special facts requiring proof, it is usual either by message, or at a conference, to ask the grounds and evidence; and this evidence, whether arising out of papers, or from the examination of witnesses, is immediately communicated. 3 Hats. 48.

### SECTION XXXIX.

*Amendments between the Houses.*—When either House; e. g. the House of Commons, sends a bill to the other, the other may pass it with amendments. The regular progression in this case is that the commons disagree to

the amendment ; the Lords insist on it ; the Commons insist on their disagreement ; the Lords adhere to their amendment ; the Commons adhere to their disagreement. The term of insisting may be repeated as often as they choose, to keep the question open. But the first adherence by either renders it necessary for the other to recede or adhere also ; when the matter is usually suffered to fall. 10 Grey, 148. Latterly however there are instances of their having gone to a second adherence. 'There must be an absolute conclusion of the subject somewhere, or otherwise transactions between the Houses would become endless. 3 Hats. 268, 270. 'The term of insisting, we are told by Sir John Trevor, was then (1679) newly introduced into parliamentary usage, by the Lords. 7 Grey, 94. It was certainly a happy innovation, as it multiplies the opportunities of trying modifications which may bring the houses to a concurrence. Either house however is free to pass over the term of insisting, and to adhere in the first instance. 10 Grey, 146. But it is not respectful to the other. In the ordinary parliamentary course, there are two free conferences at least before an adherence. 10 Grey 147.

Either house may recede from its amendment and agree to the bill ; or recede from their disagreement to the amendment, and agree to the same absolutely, or with an amendment. For here the disagreement and receding destroy one another, and the subject stands as before disagreement. Elsynge, 23, 27. 9 Grey, 476.

But the House cannot recede from or insist on its own amendment, with an amendment : for the same reason that it cannot send to the other House an amendment to its own act after it has passed the act. They may mo-

dify an amendment from the other house by ingrafting an amendment on it, because they have never assented to it; but they cannot amend their own amendment, because they have, on the question, passed it in that form. 9 Grey 333, 10 Grey, 240. Nor where one house has adhered to their amendment, and the other agrees with an amendment, can the first house depart from the form which they have fixed by an adherence.

In the case of a money bill the lords proposed amendments, become, by delay, confessedly necessary. The Commons however refused them as infringing on their privilege as to money bills; but they offered themselves to add to the bill a proviso to the same effect, which had no coherence with the Lords amendments; and urged that it was an expedient warranted by precedent, and not unparliamentary in a case become impracticable, and irremediable in any other way. 3 Hats. 256. 266. 270. 271. But the Lords refused, and the bill was lost. 1 Chand. 288. A like case, 1 Chand. 311.—So the Commons resolve that it is unparliamentary to strike out at a conference any thing in a bill which hath been agreed and passed by both houses. 6 Grey, 274. 1 Chand. 312.

A motion to amend an amendment from the other house takes precedence of a motion to agree or disagree.

A bill originating in one house, is passed by the other with an amendment. The originating house agrees to their amendment with an amendment. The other may agree to their amendment with an amendment: that being only in the 2d and not the 3d degree. For as to the amending house, the first amendment with which they passed the bill, is a part of its text; it is the only text they have agreed to. The amendment to that text by the

originating house, therefore, is only in the 1st degree, and the amendment to that again by the amending house is only in the 2d, to wit, an amendment to an amendment, and so admissible.—Just so when, on a bill from the originating house, the other, at its 2d reading, makes an amendment ; on the 3d reading this amendment is become the text of the bill, and if an amendment to it be moved, an amendment to that amendment may also be moved, as being only in the 2d degree.

### SECTION XL.

*Conferences.*—It is on the occasion of amendments between the houses that conferences are usually asked : but they may be asked in all cases of difference of opinion between the two houses on matters depending between them. The request of a conference however must always be by the house which is possessed of the papers. 3 Hats. 31. 1 Grey, 425.

Conferences may be either simple or free. At a conference simply, written reasons are prepared by the house asking it, and they are read and delivered, without debate, to the managers of the other house at the conference ; but are not then to be answered. 3 Grey, 144. The other house then, if satisfied, vote the reasons satisfactory, or say nothing : if not satisfied, they resolve them not satisfactory, and ask a conference on the subject of the last conference, where they read and deliver in like manner written answers to those reasons. 3 Grey, 183. They are meant chiefly to record the justification of each house to the nation at large, and to posterity, and in proof that the miscarriage of a necessary measure is not imputable to them. 3 Grey, 255. At free conferences, the mana-

gers discuss viva voce and freely, and interchange propositions for such modifications as may be made in a parliamentary way, and may bring the sense of the two houses together. And each party reports in writing to their respective houses, the substance of what is said on both sides, and it is entered in their journals. 9 Grey, 220. 3 Hats. 280.

A conference may be asked before the house asking it has come to a resolution of disagreement, insisting or adhering. 3 Hats. 269 341. In which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given. And this is the most reasonable and respectful proceeding. For, as was urged by the Lords on a particular occasion, 'it is held vain and below the wisdom of parliament to reason or argue against fixed resolutions, and upon terms of impossibility to persuade.' 3 Hats. 226. So the Commons say 'an adherence is never delivered at a free conference, which implies debate' 10 Grey, 147. And on another occasion the Lords made it an objection that the Commons had asked a free conference after they had made resolutions of adhering. It was then affirmed however on the part of the Commons, that nothing was more parliamentary than to proceed with free conferences after adhering. 3 Hats. 269, and we do in fact see instances of conference, or of free conference, asked after the resolution of disagreeing. 3 Hats. 251, 253, 260, 286, 291, 316, 349. Of insisting, ib. 280, 296, 299, 319, 322, 353. Of adhering, 269, 270, 283, 300, and even of a second or final adherence. 3 Hats. 270. And in all cases of conference asked after a vote of disagreement, &c. the conferees of the house asking it are to leave the papers with the con-



ference of the other : and in one case where they refused to receive them, they were left on the table in the conference chamber. *ib.* 271, 317, 323, 354. 10 Grey, 146.

After a free conference, the usage is to proceed with free conferences, and not to return again to a conference. 3 Hats, 270. 9 Grey, 229.

After a conference denied, a free conference may be asked. 1 Grey, 45.

When a conference is asked, the subject of it must be expressed, or the conference not agreed to. *Ord. H. Com.* 89. 1 Grey, 425. 7 Grey, 31. They are sometimes asked to enquire concerning an offence or default of a member of the other house. 6 Grey, 181. 1 Chandler, 304. Or the failure of the other house to present to the king a bill passed by both houses. 8 Grey, 302. Or on information received, and relating to the safety of the nation. 10 Grey, 171. Or when the methods of parliament are thought by the one house to have been departed from by the other, a conference is asked to come to a right understanding thereon. 10 Grey, 148. So when an unparliamentary message has been sent, instead of answering it, they ask a conference. 3 Grey, 155. Formerly an address or articles of impeachment, or a bill with amendments, or a vote of the house, or concurrence in a vote, or a message from the king, were sometimes communicated by way of conference. 6 Grey, 128, 300, 387. 7 Grey, 50. 8 Grey, 210, 255. 1 Torbuck's deb. 278. 10 Grey, 293. 1 Chandler, 49, 287. But this is not the modern practice. 8 Grey, 255.

A conference has been asked after the 1st reading of a bill. 1 Grey, 194. This is a singular instance.

## SECTION XII.

*Messages.*—Messages between the houses are to be sent only while both houses are sitting. 3 Hats 15. They are received during a debate, without adjourning the debate. 3 Hats. 22.

In Parliament, if the House be in committee when a messenger attends, the Speaker takes the chair to receive the message, and then quits it to return into committee, without any question or interruption. 4 Grey, 226.

Messengers are not saluted by the members, but by the Speaker for the house. 2 Grey, 253. 274.

If messengers commit an error in delivering their message, they may be admitted, or called in to correct their message. 4 Grey 41.

As soon as the messenger, who has brought bills from the other house, has retired, the Speaker holds the bill in his hand, and acquaints the House 'that the other House have by their messenger, sent certain bills,' and then reads their titles, and delivers them to the clerk to be safely kept, till they shall be called for to be read. Hak. 178.

It is not the usage for one house to inform the other by what numbers a bill has past. 10 Grey 150. Yet they have sometimes recommended a bill, as of great importance to the consideration of the house to which it is sent. 3 Hats. 25. Nor when they have rejected a bill from the other house, do they give notice of it; but it passes sub silentio, to prevent unbecoming altercations. 1 Blackst 183.

A question is never asked by the one house of the other by way of message, but only at a conference; for this is an interrogatory, not a message. 3 Grey. 151, 161.

When a bill is sent by one house to the other, and

is neglected, they may send a message to remind them of it. 3 Hats. 25. 5 Grey, 154. But if it be mere inattention, it is better to have it done informally, by communications between the Speakers, or members of the two houses.

Where the subject of a message is of a nature that it can properly be communicated to both houses of parliament, it is expected that this communication should be made to both on the same day. But where a message was accompanied with an original declaration, signed by the party to which the message referred, its being sent to one house, was noticed by the other, because the declaration, being original, could not possibly be sent to both houses at the same time. 2 Hats. 260, 261, 262.

The king having sent original letters to the Commons, afterwards desires they may be returned, that he may communicate them to the Lords. 1 Chandler, 303.

## SECTION XLII.

*Assent.*—The house which has received a bill and passed it may present it for the king's assent, and ought to do it, though they have not by message notified to the other, their passage of it. Yet the notifying by message, is a form which ought to be observed between the two houses from motives of respect and good understanding. 2 Hats. 242. Were the bill to be withheld from being presented to the king, it would be an infringement of the rules of parliament. *ib.*

When the bill is enrolled, it is not to be written in paragraphs, but solidly and all of a piece, that the blanks between the paragraph may not give room for forgery. 9 Grey, 143.

## SECTION XLIII.

*Journals.*—If a question is interrupted by a vote to adjourn, or to proceed to the orders of the day, the original question is never printed in the journal, it never having been a vote, nor introductory to any vote: but when suppressed by the previous question, the first question must be stated in order to introduce, and make intelligible the second. 2 Hats. 83.

So also when a question is postponed, adjourned or laid on the table, the original question, though not yet a vote, must be expressed in the journals; because it makes part of the vote of postponement, adjourning or laying it on the table.

Where amendments are made to a question, those amendments are not printed in the journals, separated from the question; but only the question as finally agreed to by the house. The rule of entering in the journals only what the house has agreed to, is founded in great prudence and good sense; as there may be many questions proposed which it may be improper to publish to the world in the form in which they are made. 2 Hats. 83.

The first order for printing the votes of the House of Commons was Oct. 30, 1685. 1 Chandler, 387.

Some judges have been of opinion that the journals of the House of Commons are no records, but only remembrances. But this is not law. Hob. 110, 111. Lex. parl. 114, 115. Jourl. H. C. Mar. 17, 1592. Hale parl. 105. For the Lords in their house have power of judicature, the Commons in their house have power of judicature, and both houses together have power of judicature; and the book of the clerk of the House of Commons

is a record, as is affirmed by act of parl. 6 H. 8 c. 16. 4 Inst. 23. 24. And every member of the House of Commons hath a judicial place. 4 inst. 15. As records they are open to every person, and a printed vote of either house is sufficient ground for the other to notice it. Either may appoint a committee to inspect the journals of the other, and report what has been done by the other in any particular case. 2 Hats 261. 3 Hats. 27, 30. Every member has a right to see the journals, and to take and publish votes from them. Being a record, every one may see and publish them. 6 Grey. 118, 119.

On information of a misentry or omission of an entry in the Journal, a committee may be appointed to examine and rectify it, and report it to the House. 2 Hats. 194, 5.

#### SECTION XLIV.

*Adjournment.*—The two houses of parliament have the sole, separate, and independent power of adjourning each their respective houses. The King has no authority to adjourn them; he can only signify his desire, and it is in the wisdom and prudence of either house to comply with his requisition, or not, as they see fitting. 2 Hats. 232. 1. Blackstone, 186. 5 Grey, 122.

A motion to adjourn simply, cannot be amended as by adding 'to a particular day.' But must be put simply 'that this house do now adjourn?' and if carried in the affirmative, it is adjourned to the next sitting day, unless it has come to a previous resolution 'that at its sitting it will adjourn to a particular day,' and then the House is adjourned to that day. 2 Hats 82.

Where it is convenient that the business of the house be suspended for a short time, as for a conference presently

to be held, &c. it adjourns during pleasure. 2 Hats. 305. Or for a quarter of an hour. 5 Grey 331.

If a question be put for adjournment it is no adjournment till the Speaker pronounces it. 5 Grey, 137. And from courtesy and respect, no member leaves his place till the Speaker has past on.

### SECTION XLV.

*A Session.*—Parliament have three modes of separation, to wit, by adjournment, by prorogation, or dissolution by the king, or by the efflux of the term for which they were elected. Prorogation or dissolution constitutes there what is called a session; provided some act has passed. In this case all matters depending before them are discontinued, and at their next meeting are taken up de novo, if taken up at all. 1 Blackst. 186. Adjournment, which is by themselves, is no more than a continuance of the session from one day to another, or for a fortnight, a month, &c. ad libitum. All matters depending remain in statu quo, and when they meet again, be the term ever so distant, are resumed without any fresh commencement, at the point at which they were left. 1 Lev. 165. Lex. parl. c. 2. 1 Ro. rep. 29. 4 Inst. 7. 27. 28. Hutt. 61. 1. Mod. 252. Ruffh. Jac's. L. Dict. Parliament. 1 Blackst. 186. Their whole session is considered in law but as one day, and has relation to the first day thereof: Bro. abr. parl. 86.

Committees may be appointed to sit during a recess by adjournment, but not by prorogation. 5 Grey, 374. 9 Grey, 350. 1 Chandler 50. Neither house can continue any portion of itself in any parliamentary function, beyond the end of the session, without the consent of the other two

branches. When done, it is by a bill constituting them commissioners for the particular purpose.

When it was said above that all matters depending before parliament were discontinued by the determination of the session, it was not meant for judiciary cases, depending before the house of Lords, such as impeachments, appeals, and writs of error. These stand continued of course, to the next session. Raym. 120. 381. Ruffh. Jac. L. D. parl.

### SECTION XLVI.

*Treaties.*—Treaties are legislative acts. A treaty is a law of the land. It differs from other laws only as it must have the consent of a foreign nation, being but a contract with respect to that nation. In all countries, I believe, except England, treaties are made by the legislative power: and there also, if they touch the laws of the land, they must be approved by parliament. Ware v. Hylton. 3, Dallas rep. 273. It is acknowledged, for instance, that the King of Great Britain cannot by a treaty make a citizen of an alien. Vattel. B. 1. c. 19. sec. 214. An act of parliament was necessary to validate the American treaty of 1783. And abundant examples of such acts can be cited. In the case of the treaty of Utrecht in 1712, the commercial articles required the concurrence of parliament. But a bill brought in for that purpose was rejected. France, the other contracting party, suffered these articles, in practice, to be not insisted on, adhered to the rest of the treaty. 4 Russel's hist. Mod. Europe 457. 2 Smollet. 242, 246.

### SECTION XLVII.

*Impeachment.*—Jurisdiction. The lords cannot impeach any so themselves, nor join in the accusation, be-

cause they are the judges. Seld. Judic. in parl. 12, 63. Nor can they proceed against a Commoner but on complaint of the Commons. id. 84. The Lords may not, by the law, try a commoner for a capital offence, on the information of the King, or a private person; because the accused is entitled to a trial by his peers generally; but on accusation by the House of Commons, they may proceed against the delinquent of whatsoever degree, and whatsoever be the nature of the offence; for there they do not assume to themselves trial at common law. The Commons are then instead of a jury, and the judgement is given on their demand, which is instead of a verdict. So the Lords do only judge, but not try the delinquent. id. 6, 7. But Wooddeson denies that a commoner can now be charged capitally before the lords, even by the commons; and cites Fitzbarris's case 1681, impeached of high treason, where the lords remitted the prosecution to the inferior court. 8 Grey's deb. 325. 7, 2 Wooddeson, 601, 576. 3 Seld. 1610, 1619, 1641. 4 Blacks. 257. 3 Seld. 1604, 1618. 9, 1656.

Accusation. The commons, as the grand inquest of the nation, become suitors for penal justice. 2 Wood. 597. 6 Grey 356. The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation at the bar of the House of Lords, in the name of the Commons. The person signifies that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the peers will take order for his appearance. Sachev. trial 325. 2 Wood. 602, 605. Lords Journ. 3 June, 1701. 1 Wms. 616. 6 Grey, 324.



**Process.** If the party do not appear, proclamations are to be issued, giving him a day to appear. On their return they are strictly examined. If any error be found in them, a new proclamation issues giving a short day. If he appear not, his goods may be arrested, and they may proceed. Seld. Jud. 98, 99.

**Articles.** The accusation (articles) of the Commons is substituted in place of an indictment. Thus, by the usage of parliament, in impeachment for writing or speaking, the particular words need not be specified. Sach. tr. 325. 2 Wood. 602, 605. Lords Journ. 3d June 1701. 4 Wms. 616.

**Appearance.** If he appears, and the case be capital, he answers in custody : though not if the accusation be general. He is not to be committed but on special accusations. If it be for a misdemeanor only, he answers, a lord in his place, a commoner at the bar, and not in custody, unless on the answer, the Lords find cause to commit him, till he find sureties to attend, and lest he should fly. Seld. Jud. 98, 99. A copy of the articles is given him, and a day fixed for his answer. T. Ray. 1 Rushw. 268. Fost. 232. 1 Clar. hist. of the reb. 379. On a misdemeanor, his appearance may be in person, or he may answer in writing, or by attorney. Seld. Jud. 100. The general rule on an accusation for a misdemeanor is that in such a state of liberty or restraint as the party is when the Commons complain of him, in such he is to answer. id. 101. If previously committed by the Commons, he answers as a prisoner. But this may be called in some sort *judicium parium suorum*. ib. In misdemeanors the party has a right to counsel by the common law ; but not in capital cases. Seld. Jud. 102. 5.

**Answer.** The answer need not observe great strictness of form. He may plead guilty, as to part, and defend as to the residue; or, saving all exceptions, deny the whole, or give a particular answer to each article separately. 1 Rush. 274. 2 Rush. 1374. 12 parl. hist. 442. 3 Lords Journ. 13 Nov. 1643. 2 Wood. 607. But he cannot plead a pardon in bar to the impeachment. 2 Wood. 615. 2 St. tr. 735.

**Replication, Rejoinder, &c.** There may be a replication, rejoinder, &c. Seld. Jud. 114. 8 Grey's deb. 233. Sach. tr. 15. Journ. H. of Commons, 6 March, 1640. 1.

**Witnesses.** The practice is to swear the witnesses in open house, and then examine them there: or a committee may be named, who shall examine them in committee, either on interrogatories agreed on in the house, or such as the committee in their discretion shall demand. Seld. Jud. 120, 123.

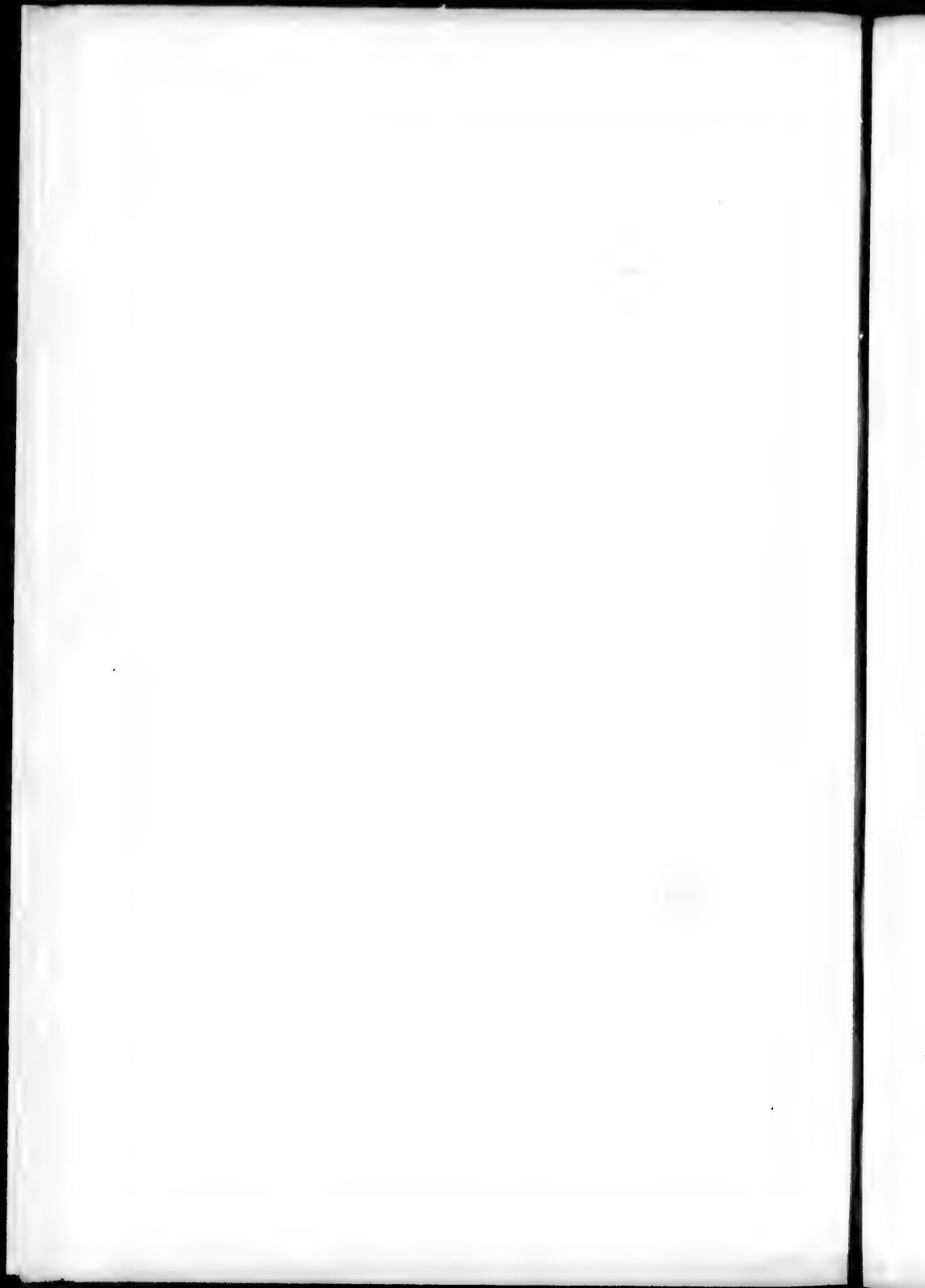
**Jury.** In the case of Alice Pierce, 1 R. 2. a jury was impannelled for her trial before a committee. Seld. Jud. 123. But this was on a complaint, not on impeachment by the Commons. Seld. Jud. 163. It must also have been for a misdemeanor only, as the Lords spiritual sat in the case, which they do on misdemeanors, but not in capital cases, id. 148. The judgment was a forfeiture of all her land and goods. id. 188. This, Selden says, is the only jury he finds recorded in parliament for misdemeanors: but he makes no doubt, if the delinquent doth put himself on the trial of his country, a jury ought to be empanelled, and he adds that it is not so on impeachment by the commons; for they are in loco proprio, and there no jury ought to be empanelled. id. 124. The Ld. Berkeley, 6 E. 3. was arraigned for the murder of L. 2. on an information

on the part of the king, and not on impeachment of the Commons; for then they had been *patria sua*. He waived his peer age, & was tried by a jury of Gloucestershire & Warwickshire. *id.* 125. In 1 H. 7. the Commons protest that they are not to be considered as parties to any judgement given, or hereafter to be given in parliament. *id.* 133. They have been generally, and more justly considered, as is before stated, as the grand jury. For the conceit of Selden is certainly not accurate, that they are the *patria sua* of the accused, and that the Lords do only judge, but not try. It is undeniable that they do try. For they examine witnesses as to the facts, and acquit or condemn, according to their own belief of them. And Lord Hale says 'the peers are judges of law as well as of fact.' 2 Hale, P. C. 275. Consequently of fact as well as of law.

**Presence of Commons.** The Commons are to be present at the examination of witnesses. *Seld. Jud.* 124. Indeed they are to attend throughout, either as a committee of the whole house, or otherwise, at discretion, appoint managers to conduct the proofs. *Rushw. tr. of Straff.* 37. *Com. Journ.* 4 Feb. 1709, 10. 2 Wood. 614. And judgement is not to be given till they demand it. *Seld. Jud.* 124. But they are not to be present on impeachment when the Lords consider of the answer or proofs, and determine of their judgement. Their presence however is necessary at the answer and judgement in cases capital. *id.* 158, 159. as well as not capital. 162. The Lords debate the judgement among themselves. Then the vote is first taken on the question of guilty or not guilty: and if they convict, the question, or particular sentence is out of that which seemeth to be most generally agreed on. *Seld. Jud.* 167. 2 Wood. 612.

**Judgment.** Judgments in parliament for death have been strictly guided per legem terræ, which they cannot alter: and not at all according to their discretion. They can neither omit any part of the legal judgment, nor add to it. Their sentence must be secundum, non ultra legem. Seld. Jud. 168—171. This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crime and punishments prevail. For impeachments are not framed to alter the law, but to carry it into more effectual execution against too powerful delinquents. The judgment therefore is to be such as is warranted by legal principles or precedents. 6 Sta. tr. 14. 2 Wood. 611. The chancellor gives judgments in misdemeanors; the Lord High Steward formerly in cases of life and death. Seld. Jud. 180. But now the Steward is deemed not necessary. Fost. 144. 2 Wood 613. In misdemeanors the greatest corporal punishment hath been imprisonment. Seld. Jud. 184. The king's assent is necessary in capital judgments, (but 2 Wood. 614. contra) but not in misdemeanors. Seld. Jud. 136.

**Continuance.** An impeachment is not discontinued by the dissolution of parliament: but may be resumed by the new parliament. T. Ray 383. 4 Com. Journ. 23 Dec. 1790. Lords Jour. May 16, 1791. 2 Woodd. 618.



# APPENDIX.

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## RULES AND REGULATIONS TO BE OBSERVED IN THE LEGISLATIVE COUNCIL OF Upper-Canada.

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I. The Members of the Legislative Council are to sit in the order prescribed by his Majesty.

II. The Speaker when he speaks to the house, is always to be uncovered, and is not to adjourn the house, or do any thing else as mouth of the house, without the consent of the Members first had, excepting the ordinary things about bills which are of course, wherein the Members may likewise over-rule as for preferring one bill before another, and such like. And in case of difference among the Members, it is to be put to the Question ; and if the Speaker will speak to any thing particularly, he is to go to his own place as a Member.

III. At the beginning of a Parliament after Prayers shall have been read, and the Speaker shall have taken the oath prescribed by law, then all the Members of the Legislative Council present shall in like manner take, make and subscribe the said oath.

IV. That the Chaplain shall read Prayers every day at the opening of the house.

V. On the second Friday after the commencement of each Session, the house be called, and notice taken of such Members as are absent, not excused by the King, or by his Majesty's representative.

VI. For absence, every Member is to make his excuse by a Member of the house, and if allowed to be just, he is to be excused, if not he is to be blamed by the house as the fault requires.

VII. That immediately after Prayers the Journals of the preceding day be always read.

VIII. That any Member may at any time desire the house to be cleared of strangers, and the Speaker shall immediately give directions to execute the order, without debate.

IX. When the house is sitting, every Member that shall enter, is to give and receive salutations from the rest, and not to sit down in his place unless he has made his obeisance to the Chair of State.

X. The Members in the upper house are to keep their dignity and order in sitting as much as may be, and not remove out of their places without just cause ; but when they must needs go across the house, they are to make obeisance to the Chair of State.

XI. That if any Member have occasion to speak with another Member while the house is sitting, they shall go together below the bar, or else the Speaker is to stop the business in agitation.

XII. When any Members speak, they address their speech to the rest of the Members in general.

XIII. No Member is to speak twice to any bill at one time of reading it, or to any other proposition, unless it be to explain himself in some material point of his speech,

but no new matter ; and that not without leave of the house first obtained—every Member speaks standing and uncovered, and names not the Members of the house commonly by their names, but “the Member that spoke last,” —“last but one,” —“last but two,” &c. or some other note of distinction.

XIV. That such Members as shall make protestation, or enter their dissents to any votes of the house, as they have a right to do, without asking leave of the house, either with or without their reasons, shall cause their protestations or dissents to be entered in the Clerk’s book on the next sitting day of this house, before the rising of the house, otherwise the same shall not be entered ; and shall also sign the same before the rising of the house on the same day.

XV. That all orders of the day, which by reason of any adjournment shall not have been proceeded upon, shall be considered only as postponed to the next day on which the house shall sit.

XVI. To prevent misunderstanding, and for avoiding offensive speeches when matters are debating, either in the house or at Committees, it is for honor’s sake thought fit, and is so ordered, that, all personal, sharp or taxing speeches, be forborne, and that whosoever answereth another man’s speech, shall apply his answer to the matter without wrong to the person, and as nothing offensive is to be spoken, so nothing is to be ill taken, if the party that speaks it shall presently make a fair exposition, or clear denial of the words that might bear any ill construction ; and if any offence be given in that kind, as the house itself will be very sensible thereof, so it will censure the offender, and give the party offended a fit reparation, and a full satisfaction.



**XVII.** That for avoiding all mistakes, unkindness, or other differences, which may grow to quarrels tending to the breach of the peace, if any Member shall conceive himself to have received any affront or injury from any other Member of the house, either in the Parliament house, or at any Committee, or in any of the rooms belonging to the Legislative Council, he shall appeal to the house for his reparation ; which if he shall not do, but occasion or entertain quarrels, declining the justice of the house, then the Member that shall be found therein offending, shall undergo the severe censure of the house.

**XVIII.** That when a question is under debate, no motion shall be received in the house, unless to amend it, commit it, postpone it to a certain day, or for the order of the day, or to adjourn.

**XIX.** That all Motions, deemed special, two days notice thereof be given to the house ; and any Motion (with leave of the house) may be withdrawn any time before amendment or decision.

**XX** That no motion prefaced by a written preamble, shall be received by this house.

**XXI.** That when the question hath been entirely put by the Speaker, no Member is to speak upon the question before voting.

**XXII.** That after a question is put and the house hath voted thereon, no Member shall depart out of his place until the house hath entered upon some other business.

**XXIII.** That at votes, the contents do rise in their places, and the non-contents continue to sit.

**XXIV.** That the Clerk is to enter no order until the Speaker first demand the assent of the house ; and the Clerk is to read every order first in the house, before it be entered.

XXV. That each Member has a right to require that the question, or Motion in discussion, be read for his information, at any time of the debate.

XXVI. To have more freedom of debate and to facilitate business, Committees, are appointed either of the whole house, or of individuals, Committees of the whole house sit in the house, but then the Speaker sits not in the Chair as Speaker.

XXVII. That when the House shall be put into a Committee of the whole house, the house be not resumed without the unanimous consent of the Committee, unless upon a question put by the Member who shall be in the Chair of such Committee.

XXVIII. That in a Committee of the whole house, the Rules of the house shall be observed in so far as they may be applicable, excepting the rule limiting the times of speaking, and that no motion for the previous question, or for adjournment can be received, but a Member may at any time move that, the Chairman do leave the Chair, or report some progress made, and ask leave to sit again.

XXIX. That select Committees usually meet in one of the Committee rooms as the Members like. The Members of the Committee speak to the rest uncovered, but may sit still if they please.

XXX. Every Member to sit in his due place when the house is put into a Committee.

XXXI. At any Committee, Members of the house though not of the Committee, are not excluded from coming in and speaking, but they must not vote; they shall also give place to all that are of the Committee and shall sit behind them.

**XXXII.** If it be desired by any Member that the house be put into Committee it ought not to be refused.

**XXXIII.** When any thing that hath been committed, is reported, the Members of the Committee stand up.

**XXXIV.** No man is to enter at any Committee or Conference, unless it be such as are commanded to attend, but such as are Members of the house, upon pain of being punished severely, with example to others.

**XXXV.** That no message from the Assembly be received in this house with a bill or otherwise, unless the object of it be expressed verbally, as hath hitherto been practised.

**XXXVI.** When notice is given to the house by the Usher of the Black Rod, that a Message or deputation is sent by the house of Assembly, they attend until the house is prepared to receive them. We being seated, they are then admitted. On their coming up to the bar with three obeisances, the Speaker goes down to the bar and receives their message uncovered ; the message is then read and delivered to the Speaker by one of the Members of the deputation : on their retiring with three obeisances to the house, the Speaker resumes the Chair and standing uncovered reports the message for the information of the Members. The house then resumes the business it had before it.

**XXXVII.** None are to speak at a Conference with the lower house, but those that be of the Committee ; and when any thing from such Conference is reported, all the Members of that Committee present are to stand up.

**XXXVIII.** As it might deeply intrench on the privileges of this house for any Member to answer an accusation in the house of Assembly, either in person or by sen-

ding his answer in writing, or by his Council there upon serious consideration had thereof and perusal of the precedents in the upper house of the Imperial Parliament, it is Ordered, that, no Member of this house shall either go down to the house of Assembly, or send his answer in writing, or appear by Counsel to answer any accusation there upon penalty of being committed to the Black Rod or to prison, during the pleasure of this house.

XXXIX. That no Member or officer of this house without leave of the house, shall by order of the Assembly, go into that house whilst the house, or any committee of the whole house is sitting there, or appear before any committee of that house sitting there or elsewhere.

XL. That the Members of the Assembly be admitted as auditors of the debate of this house, or any other person, introduced by a Member of this house.

XLI. That it is the right of every Member of this house to bring in a bill and pray that it may be read.

XLII. Bills are seldom opposed at the first reading, but are generally committed, upon motion, at the second reading, at which time the principle is usually debated.

XLIII. That no arguments against the principle of a bill shall be had or admitted in any committee of the whole house upon such bill.

XLIV. That no bill shall be read twice on the same day; that no committee of the whole house, shall proceed on any bill on the same day in which the bill is committed unless the house, upon motion, shall see special cause for the common utility to change the same course in any particular instances.

XLV. That in a committee of the whole house, a Member may at any time previous to a bill being passed

entirely, that is to say, all the clauses, preamble and title of the same, move, to have any particular clause thereof that may have been passed, reconsidered.

XLVI. That to annex any clause or clauses to a bill of aid or supply, the matter of which is foreign to and different from the matter of the said bill of aid or supply, is unparliamentary.

XLVII. That proof that notice of the intention of any person or persons to apply to the Legislature, for its interference, respecting any local matter, should be publicly given in the Upper Canada Gazette, at least once in each month for six months preceeding the session in which such application is to be made.

XLVIII. That every Petition which is brought up, shall lay on the table two days before it is read.

XLIX. That the allegations in every Petition for a private bill, meant to originate in this house, shall be first referred to a select committee, and the matter thereof reported upon, before the introduction of any such bill.

L. That every Member who shall introduce a bill, petition or motion upon any subject which may be referred to a Committee, shall be one of the committee without being named by the house.

LI. That when a private bill is brought from the other house the principle of which is admitted, this house by Message may either request a communication of the evidence received in proof of the allegations, or matter whereon the bill is founded, or the committee of this house to whom it may be referred shall examine the said allegations, and on reporting the bill, state whether the same, or matter thereof, be founded, and whether the parties concerned in interest or property therein, have

given their consents to the satisfaction of the committee.

LII. That the foregoing be considered a standing instruction at all committees who shall meet upon private bills, and further, that they require all persons, whose interest or property they shall consider to be affected thereby, to appear in person before them, to give their consent thereto; and if they cannot personally attend, they may send their consent in writing; which shall be proved to the satisfaction of the committee; and that when any committee shall be appointed on a private bill, notice thereof shall be set up in the lobby of this house, seven days before the meeting of the said committee.

LIII. That when a bill, originating in this house, has once passed through its final stage in this house, no new bill, for the same object, can afterwards be originated in this house during the same session.

LIV. That for the future, no motion shall be granted for making any order of this house a standing order, or for dispensing with a standing order, the same day it is made, nor before the Members of this house in town, shall be summoned to consider of the said motion.

LV. That four Members and the Speaker shall constitute a quorum.

**RULES**  
**FOR THE GUIDANCE OF PROCEEDINGS IN THE**  
**House of Assembly,**

*Adopted Monday, 31st January, 1825.*

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**MEETINGS AND ADJOURNMENTS OF THE  
HOUSE.**

*Resolved*—That this house do meet at ten o'clock, A. M. and if at that hour, there is not a quorum, the Speaker may take the Chair and adjourn.

II. That when the house adjourns, the members shall keep their seats until the Speaker leaves the Chair.

III. That whenever an adjournment takes place for want of a quorum, the hour at which such adjournment is made, and the names of the Members present, shall be inserted in the Journals.

**PRAYERS.**

IV. That the Chaplain shall read prayers every day, at the opening of the house.

**QUORUM.**

V. That twenty-three Members including the Speaker, shall form a quorum.

**MINUTES.**

VI. That every day, immediately after the Speaker shall have taken the chair, the minutes of the preceding day shall be read by the Clerk, to the end that any mistake therein may be corrected by the house.

VII. That during the reading of the minutes the doors shall be closed.

## SPEAKER.

VIII. That the Speaker shall preserve order and decorum, and decide questions of order, subject to an appeal to the house.

IX. That the Speaker shall take the chair when Black Rod is at the door.

X. That the Speaker shall not take part in any debate, or vote, unless the house shall be equally divided, in which case he may give his reasons for so voting, standing uncovered.

XI. That when the Speaker is called upon to decide a point of order or practice, he shall state the rule applicable to the case.

## MEMBERS.

XII. That every Member, previous to his speaking to any question or motion, shall rise from his seat uncovered, and address himself to the Speaker.

XIII. That when two or more Members rise at once, the Speaker shall name the Member who is first to speak, subject to appeal to the house.

XIV. That every Member who shall be present when a question is put, shall vote thereon, unless the house shall excuse him, or unless he be personally interested in the question, provided such interest is resolvable into a personal pecuniary profit, or such as is peculiar to the Member, and not in common with the interest of the subject at large, in which case he shall not vote.

XV. When the Speaker is putting a question, no Member shall walk out of, or across the house, nor when a Member is speaking, shall any other Members hold discourse which may interrupt him, nor pass between him and the Chair.



XVI. That a Member called to order shall sit down, unless permitted to explain, and all debate on the question of order, shall take place before the decision of the Speaker.

XVII. That no Member shall speak beside the question in debate.

XVIII. That any Member may of right require the question, or motion in discussion, to be read for his information, at any time during the debate, but not so as to interrupt a Member speaking.

XIX. That no Member, other than the one proposing a question or motion, (who shall be permitted a reply) shall speak more than once on the same, without leave of the house, except in explanation of a material part of his speech, which may have been mis-conceived, but then he is not to introduce new matter.

XX. That any Member may at any time desire the house to be cleared of strangers, and the Speaker shall immediately give directions to the Serjeant at Arms to do so, without debate.

### LEGISLATIVE COUNCIL.

XXI. That the Master in chancery attending the Legislative Council, be received as their messenger at the Clerk's table, where he shall deliver such message as he is charged with.

XXII. That all messages from this house to the Legislative Council be sent by two Members, to be named by the Speaker, accompanied by the Serjeant at Arms.

XXIII. That when the house shall judge it necessary to request a conference with the Legislative Council, the reasons to be given by this house upon the subject of the

\* By resolution of the House of Assembly, 13 Jan'y 1829,  
 this rule expunged & the following rule adopted,  
 "That a member may, at any time, move  
 that the House be cleared of strangers, & the  
 Speaker shall immediately put the question,  
 without debate. Printed Journals H. A.  
 10<sup>th</sup> Vol. (1<sup>st</sup> Session) 1829, Page 8.



conference shall be prepared and agreed to by the house, before the messenger's shall be appointed to make the said request.

### COMMITTEE.

XXIV. That the rules of the house shall be observed in committee of the whole so far as they may be applicable, except the rule limiting the times of speaking.

XXV. That in forming a Committee of the whole house, before leaving the Chair the Speaker shall appoint a chairman to preside, who shall immediately take the Chair without argument or comment.

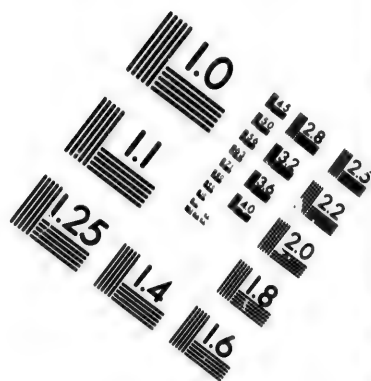
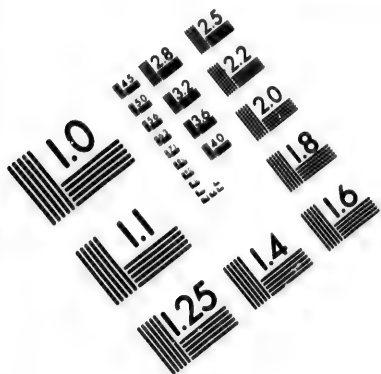
XXVI. That every Member who shall introduce a bill, petition, or motion upon any subject which may be referred to a Committee, shall be one of the Committee without being named by the house, except in cases of controverted elections.

XXVII. That of the number of Members appointed to compose a Committee, such number thereof as shall be equal to a majority of the whole number chosen, shall be a quorum competent to proceed to business, except in election Committees, where the number, to form such quorum, shall not be specially fixed by the house.

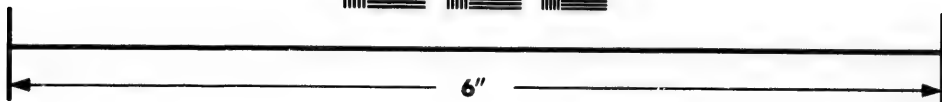
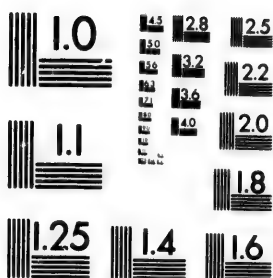
XXVIII. That in a Committee of the whole house, a motion that the chairman leave the Chair, shall always be in order and take precedence of every other motion, and that when the motion is made on account of any question of order or privilege arising, the Speaker shall resume the Chair without discussion or vote of the Committee.

XXIX. That in Committee of the whole house, all motions relating to the matter under consideration shall be put, in the order in which they are proposed.





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**XXX.** That the mode of appointing a special Committee, consisting of more than five Members, shall be, first, to determine the number of which it shall consist, then, each Member shall write on a slip of paper the names of as many Members as are to form such Committee, and deliver the same to the Clerk, who shall thereupon examine the said lists, and report to the Speaker for the information of the house, who have most voices in their favor; and if any difficulty should arise by two or more having an equal number of voices, the sense of the house shall be taken as to the preference.

#### **YEAS AND NAYS.**

**XXXI.** That the Yeas and Nays shall be taken and entered on the minutes at the request of any one Member.

#### **MOTIONS AND QUESTIONS.**

**XXXII.** That one day's notice shall be given of all motions for introducing new matter, other than matters of privilege and bringing up petitions.

**XXXIII.** That a motion to adjourn shall always be in order.

**XXXIV.** That after a motion is read by the Speaker, it shall be deemed to be in the possession of the house, but may be withdrawn at any time before decision, or amendment, with permission of the house.

**XXXV.** That a motion for commitment, until it is decided, shall preclude all amendment of the main question.

#### **AID AND SUPPLY.**

**XXXVI.** That if any motion be made for any public aid, subsidy, duty or charge upon the people, the consideration and debate thereon shall not presently be entered upon, but adjourned till such further day as the



house shall think fit to appoint, and shall be referred to a Committee of the whole house, and their opinion reported before any resolution or vote of the house do pass thereupon.

### BILLS.

XXXVII. That when a bill or petition is read in the house, the Clerk shall certify the readings, and the time on the back thereof.

XXXVIII. That every bill shall be read twice before it is committed, and engrossed and read a third time before it is sent up to the Legislative Council for concurrence.

XXXIX. That when any bill shall be brought down to this house from the honorable the Legislative Council, or when any bill sent up from this house to the Legislative Council shall be returned with amendments, such bill so brought down, or the amendments, shall undergo the same readings and formal consideration, and the same shall be committed and be subjected to the same order, form and stages, as are observed upon bills originating in this house.

XL. That every public bill shall be introduced by a motion for leave, specifying the object of the bill; or by a motion to appoint a Committee to prepare and bring it in; or by an order of the house on the report of a Committee: and that every private bill, after the present session, shall be founded on a petition, notice of the intention of the petitioners having been inserted in the Upper Canada Gazette for the period of six months previous to the meeting of the Legislature.

XLI. That when any bill is brought into the house, at least three days shall elapse between the first and second reading of the same; and at least two days between the final report of the Committee and the third reading, unless the operation of this rule shall be suspended by the consent of at least twenty-three Members.\*

\* This rule was rescinded during the 3d Sess. 9th Provincial Parliament, and the following adopted in lieu thereof, "that no bill brought into this house shall have more than one reading on the same day."

## RULES.

XLII. That no rule adopted by this house shall be dispensed with, unless by consent of at least, twenty-three Members.

## PETITIONS.

XLIII. That all petitions to be introduced, shall be brought in immediately after the minutes are read, and that such petitions shall be read by the Clerk, after the third reading of any bills that may stand for that purpose on the order of the day; provided such petitions shall have lain on the table two days.

## ORDERS OF THE DAY.

XLIV. That all orders of the day which, by reason of any adjournment, shall not have been proceeded upon, shall be considered as postponed. till the next day on which the house shall sit, and shall stand first on the order of the day after the third reading of bills and addresses, and reading of petitions.

## ACCOUNTS.

XLV. That all accounts which shall in future be presented by any individual for work or labor done, or for articles furnished for the use of this house, shall be sworn to, and the affidavit specify that the charges therein contained, are the usual charges, and the commonly received prices for such work and labour, or for such articles furnished.

## PRINTING.

XLVI. That all the printing done by order of the house shall be engaged by contract for the session, on the lowest terms offered, and during the session, be under the superintendence of a select Committee; and during the recess, under the Clerk.

## UNPROVIDED CASES.

XLVII. That in all unprovided cases, resort shall be had to the rules, usages and forms of the Parliament of Great Britain and Ireland.

*Truly Extracted from the Minutes.*

GRANT POWELL, Clerk of Assembly.

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